VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 252

[redacted] WAY STORES, INCORPORATED,

APPELLANT,

vs.

[redacted] A RETAIL GROCERS ASSOCIATION, INC. AND LOUIE J. SPEED, INC.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 252

SAFEWAY STORES, INCORPORATED,
APPELLANT,

vs.

OKLAHOMA RETAIL GROCERS ASSOCIATION,
INC. AND LOUIE J. SPEED, INC.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

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[fol. A] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 37,326

SAFEWAY STORES, INC., a foreign corporation,
Plaintiff in Error,

vs.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., a Corporation, and LOUIE J. SPEED, INC., dba SPEED'S FOOD MARKET No. 1, Defendants in Error.

PETITION IN ERROR—Filed April 19, 1956

The said Safeway Stores, Inc., a corporation, plaintiff in error, complains of said defendants in error, for that the said Oklahoma Retail Grocers Association, Inc., a corporation, on the 21st day of October, 1955, in the District Court of Oklahoma County, Oklahoma, recovered a judgment by the consideration of said Court against Safeway Stores, Inc., a corporation in a certain action then pending in said Court, whereby a permanent injunction was issued [fol. B] againt plaintiff in error; that the said Louie J. Speed, Inc., dba Speed's Food Market No. 1, recovered a judgment against plaintiff in error in said cause on the cross-petition filed by plaintiff in error against said defendant in error, by which the District Court refused a permanent injunction against such defendant in error as sought by plaintiff in error on said cross-petition, wherein plaintiff in error's application for a permanent injunction against said defendant in error was denied by the Court. The original case made duly signed, attested and filed, is hereunto attached, marked "Exhibit A", and made a part of this petition in error, and the said plaintiff in error avers that there is error in said record and proceedings in this to-wit:

1. Said Court erred in overruling motion of plaintiff in error for a new trial.

2. Said Court erred in issuing a permanent injunction against plaintiff in error enjoining and restraining it from reducing its prices on merchandise sold by it to meet the reduction in prices effected by its competitors by the giving of trading stamps.

[fol. C] 3. The Court erred in issuing a permanent injunction against plaintiff in error, enjoining and restraining it from meeting prices of merchandise previously established by its competitors in the mercantile business.

4. Said Court erred in denying plaintiff in error's application for a permanent injunction against defendant in error, Louis J. Speed, Inc., dba Speed's Food Market No. 1, and erred in refusing permanently to enjoin the said defendant in error from issuing trading stamps, or other evidence of credit, with merchandise sold by said defendant in error at or below the minimum markon required by the Oklahoma Unfair Sales Act.

5. Said Court erred in overruling the demurrer of plaintiff in error to the evidence of defendant in error, Oklahoma Retail Grocers Association, Inc., a corporation.

6. Said Court erred in rendering judgment against plaintiff in error and in favor of defendant in error, Oklahoma Retail Grocers Association, Inc., a corporation.

7. Said Court erred in rendering judgment against plaintiff in error and in favor of defendant in error, Louie J. Speed, Inc., dba Speed's Food Market No. 1, on the cross petition of plaintiff in error against said defendant in error.

[fol. D] 8. Said Court erred in admitting irrelevant, incompetent and immaterial evidence over the objections and exceptions of plaintiff in error.

9. Said Court erred in excluding competent, relevant and material evidence offered by plaintiff in error.

10. Said Court erred in limiting the scope of the expert testimony offered by plaintiff in error in rebuttal in said cause.

11. Said Court erred in refusing to limit the scope of the injunction to the issues made by the pleadings and evidence, and erred in making the injunction against plaintiff in error statewide in its operation.

12. Said Court erred in permanently enjoining plaintiff in error from giving double or multiple stamps, or other evidences of credit with the sale of merchandise, and in holding that double or multiple stamps, or other evidences of credit, violated the Oklahoma Unfair Sales Act, but that the giving of single stamps or other evidences of credit did not violate such Act.

[fol. E] 13. Said Court erred in refusing to hold that trading stamps, and similar evidences of credit, distributed with the sale of articles of merchandise in direct proportion to the prices at which such merchandise is sold effect a reduction in the sales price of such article.

14. Said Court erred in refusing to hold and decide that a non-stamp competitor has the right to meet price reductions, even though it had reason to believe that such reduced prices were below said stamp competitors' costs.

15. Said Court erred in refusing to hold and decide that under the Oklahoma Unfair Sales Act a competitor has the right, in good faith, to meet prices at which his competitors sell merchandise, and in refusing to hold and decide that proof of the meeting of such prices does not establish the evil intents and results required by said Act to constitute a violation thereof.

16. Said Court erred in refusing to hold and decide that the issuance of trading stamps, and other evidences of credit, by defendant in error, Louie J. Speed, Inc., a corporation, dba Speed's Food Market No. 1, with the sale of [fol. F] articles of merchandise by him constituted a "tied sale" as defined by sub-section (d), Section 598.2, Title O. S. A.

17. Said Court erred in compelling plaintiff in error, over its objections and exceptions, to furnish defendants in error percentage figures relating to its volume of business and relating to so-called quotas of plaintiff in error.

18. Said Court erred in refusing to require defendant in error, Louie J. Speed, Inc., a corporation, dba Speed's Food Market No. 1, to furnish to plaintiff in error percentage figures as to its volume of business.

19. Said Court erred in permitting the witness, Peloubet, to express opinions on matters as to which he was not qualified as an expert witness.

20. Said Court erred in holding and deciding that trading stamps and other evidences of credit constitute cash discounts, and in holding that such discounts were permissible at the retail level under the Oklahoma Unfair Sales Act.

21. The judgment of the Court enjoining plaintiff in error from meeting the equally low prices of members of [fol. G] Oklahoma Retail Grocers Association, Inc., and competitors of plaintiff in error, constitutes a violation of the constitutional rights of plaintiff in error, and denied to plaintiff in error the equal protection of the law, as guaranteed by the Fourteenth Amendment to the Constitution of the United States, and constitutes the taking of property without due process of law, in violation of Article II, Section 7, of the Constitution of the State of Oklahoma, and the Fifth Amendment to the Constitution of the United States.

Wherefore, Plaintiff in error prays that said judgment so rendered as between it and defendant in error, Oklahoma Retail Grocers Association, Inc., and between it and defendant in error, Louie J. Speed, Inc., dba Speed's Food Market No. 1, may be reversed, set aside and held for naught, and that a judgment be rendered herein in favor of plaintiff in error and against defendants in error, and that plaintiff in error be restored to all rights it has lost by the rendition of such judgment, and to such other relief as to the Court may seem just.

Safeway Stores, Inc., Plaintiff in Error. By Embry, Crowe, Tolbert, Boxley & Johnson, V. P. Crowe, Its Attorney.

[fol. H] (Certificate of Service (omitted in printing).

[fol. I]

Exhibit "A" to Petition in Error

IN THE DISTRICT COURT WITHIN AND FOR OKLAHOMA COUNTY, STATE OF OKLAHOMA.

No. 134,533.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., a Corporation, Plaintiff,

vs.

SAFEWAY STORES, INC., a Foreign Corporation, Defendant.

Case Made on Appeal From the District Court of Oklahoma County, Oklahoma.

HONORABLE F. B. H. SPELLMAN,
ALVA, OKLAHOMA,
ASSIGNED TRIAL JUDGE.

E. J. GRANTZ,
ALVA, OKLAHOMA,
OFFICIAL REPORTER.

[fol. 4]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY, STATE OF OKLAHOMA

No. 134,533.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., a corporation, Plaintiff,

vs.

SAFEWAY STORES, INC., a foreign corporation, Defendant.

PETITION—Filed October 25, 1954

Comes now the plaintiff, Oklahoma Retail Grocers Association, Inc., a corporation, and, for cause of action against the defendant, Safeway Stores, Inc., a foreign corporation, alleges and states:

1. That the plaintiff, Oklahoma Retail Grocers Association, Inc., is a duly organized and existing trade association, incorporated under and according to the laws of the State of Oklahoma, with its principal place of business located at 318 American National Building, in Oklahoma City, Oklahoma, and duly authorized and licensed by the laws of this State to conduct the business of a retail grocery association within the State of Oklahoma.

That plaintiff prosecutes this cause as the real party in interest, for and on behalf of the Association's members doing business in the State of Oklahoma. That plaintiff's members, and the location of their businesses, are set forth [fol. 5] in "Exhibit A" hereto attached, and which is incorporated herein by reference as if fully set forth herein.

That this cause is instituted for the purpose of obtaining a temporary and permanent injunction, and a temporary restraining order, for costs, and other proper and equitable relief, provided for under the terms of the "Unfair Sales Act", set out in Oklahoma Statutes Annotated, Title 15, Sections 598.1 to and including 598.11; that the acts of the defendant hereinafter complained of constitute a violation of the said "Unfair Sales Act", and said acts of defendant directly affect and threaten to irreparably damage and injure the plaintiff and the members of plaintiff Association, and to divert trade, create a monopoly, impair fair competition, and otherwise adversely affect the members of the plaintiff Association, as in said "Unfair Sales Act" provided; and that this cause is instituted for the benefit and protection of plaintiff and the members of plaintiff Association.

2. That the defendant, Safeway Stores, Inc., is a foreign corporation, organized under and by virtue of the laws of the State of Maryland, and authorized to do business within the State of Oklahoma, having places of business within the State of Oklahoma.

3. That the defendant, Safeway Stores, Inc., at all times herein mentioned, was and is now operating general retail [fol. 6] grocery outlets located in the State of Oklahoma, at which retail grocery stores the said defendant advertises for sale, offers for sale, and sells, at retail, various and sundry items of merchandise, including dry groceries, dairy products, meats, fruits, and vegetables.

4. That the defendant did, on the dates hereinafter set out, in violation of said "Unfair Sales Act", advertise for sale, offer for sale, and sell, at retail, certain articles of merchandise at less than cost to the retailer, as defined in said "Unfair Sales Act", and that said advertising for sale, offering for sale, and sales, by defendant, hereinafter more specifically set out, were in violation of the terms, restrictions, and provisions contained in said "Unfair Sales Act".

Plaintiff specifically alleges that the defendant advertised for sale, offered for sale, and sold, at retail, articles of merchandise at less than cost to the retailer, as defined in said "Unfair Sales Act", and in violation of the terms, restrictions, and provisions contained in said Act, on the dates, at the places, and for the prices as set forth in "Exhibit B" hereto attached and made a part hereof as if fully set out herein; and the defendant has, by its wilful and malicious acts and conduct, shown that it will continue to advertise for sale, offer for sale, and sell, at retail, the said items of merchandise, and any and all other items of [fol. 7] merchandise handled by it in its said stores, at less than cost to the retailer, as defined in said "Unfair Sales Act", and in violation of the terms, restrictions, and provisions of said Act.

5. That the items advertised for sale, offered for sale, and sold by defendant, and referred to in paragraph numbered "4" above, and as set out in "Exhibit B" hereto attached, were and are at less than cost as defined in said "Unfair Sales Act", and were advertised for sale, offered for sale, and sold by the defendant with the wilful intent and purpose of inducing the purchase of other merchandise, or of unfairly diverting trade from the members of plaintiff Association, who are competitors of said defendant, or otherwise injuring said members of plaintiff Association, and with the wilful, malicious, and unlawful intent and purpose of impairing and preventing fair competition, injuring the plaintiff and its members, and injuring the public welfare; and that the acts, and threatened acts, of said defendant, herein complained of, constitute unfair competition and are contrary to public policy and the policy declared in said "Unfair Sales Act", and the result

of such advertising for sale, offering for sale, and selling, and the threatened advertising, offering for sale, and selling, as herein complained of, will be to deceive purchasers or prospective purchasers, or to substantially lessen competition, or to unreasonably restrain trade, and will tend [fol. 8] to create a monopoly in the retail grocery business within the State of Oklahoma.

6. That the defendant corporation has threatened and is threatening to illegally continue to advertise for sale, offer for sale, and sell, at retail, the items of merchandise referred to herein, and other merchandise handled by it in its said stores, at less than cost as defined in said "Unfair Sales Act", and that the continuation of said advertising, offering for sale, and selling by the defendant will work great and irreparable damages to the plaintiff and the members of plaintiff Association, and will prevent fair competition, injure public welfare, substantially lessen competition, and unreasonably restrain trade, and otherwise violate the declared policy and terms of said "Unfair Sales Act"; and that the plaintiff and the members of plaintiff Association, for whose benefit this action is prosecuted, have no adequate remedy at law.

WHEREFORE, plaintiff prays:

For a judgment against the defendant, perpetually enjoining and restraining said defendant from further violation of the terms, restrictions, provisions, and conditions of the said "Unfair Sales Act" set out in Oklahoma Statutes Annotated, Title 15 Sections 598.11 to and including 598.11; and from advertising for sale, offering for sale, and selling items of merchandise handled in said defendant's estab- [fol. 9] lishments, including the items hereinabove referred to and set out in plaintiff's "Exhibit B" attached hereto, at less than cost to the retailer as defined in said "Unfair Sales Act";

For the costs of this action; and

For all other proper and equitable relief to which the Court may deem plaintiff entitled in the premises.

7. Plaintiff further alleges that, unless the said defendant, and its agents, servants, clerks, and employees, is forthwith and without notice enjoined and restrained from

doing and continuing to do said unlawful acts, the plaintiff and the members of plaintiff Association, who are the retail merchants of various localities in the State of Oklahoma, will suffer irreparable damage and injury, for which they have no adequate remedy at law; and that the acts of defendant and continued violation of said "Unfair Sales Act", and threatened violation of the same, will cause trade to be unfairly diverted from the members of plaintiff Association, who are competitors of said defendant, and will otherwise injure plaintiff and the members of plaintiff Association, and will impair and prevent fair competition within the entire State of Oklahoma, and injure the public welfare, substantially lessen competition, and unreasonably restrain trade; and that, by reason thereof, this Court should restrain said defendant from further violation of said "Unfair Sales Act", by issuing, instanter and with-
[fol. 10] out notice, a temporary order of restraint against the said defendant, and its agents, servants, clerks, employees, and all persons acting by or under the authority of said defendant.

WHEREFORE, plaintiff prays:

That a temporary restraining order against the defendant be granted forthwith, and that the defendant, its agents, servants, clerks, employees, and all persons acting by or under the authority of said defendant, be forthwith and without notice, and upon the filing of this petition with the Clerk of the District Court of Oklahoma County, enjoined and restrained from doing and continuing to do said unlawful acts herein complained of.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC.,
a corporation,
Plaintiff

By: MISKOVSKY and MISKOVSKY

By: GEORGE MISKOVSKY
GEORGE MISKOVSKY

Attorneys for Plaintiff.

[fol. 11] *Duly sworn to by L. O. Bowman, jurat omitted in printing.*

[fol. 12]

EXHIBIT "A" TO PETITION

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., a corporation, Plaintiff

vs.

SAFEWAY STORES, INC., a foreign corp., et al, Defendants

Tulake Grocery, 824 N.W. Avenue, Bethany, Okla.; Air Port Grocery, Box 5642, Midwest City, Okla.; Tinker Groc. & Mkt., 604 Air Depot Drive, Midwest City, Okla.; Wm. H. Uhless Gro., 212 E. Gray, Norman, Okla.; Quality Food Market, P. O. Box 1777, Ponca City, Okla.; Roy Stevenson, 528 West Watts, El Reno, Okla.; Glenn Douglas, Douglas Food Mart, 824 Main, Stillwater, Okla.; Fuss Grocery, Wakita, Okla.; Sunshine Grocery, Duncan, Okla.; Palace Grocery, Fairfax, Okla.; Douglas Food Mart, 114 N. Davison, Guthrie, Okla.; W. R. Fry, Jr., 204 East Okla., Guthrie, Okla.; W. F. Fuss, Medford, Okla.; Elsie Van Horn, 1915 N.W. 14th, Oklahoma City, Okla.; Pete Anthony, 19 So. Broadway, Oklahoma City 2, Okla.; Acme IGA of Britton, 921 Britton Avenue, Oklahoma City, Okla.; Andrew's Super Market, 3931 N.W. 10th, Oklahoma City, Okla.; Arnold's Grocery, 618 S. Hudson, Oklahoma City 6, Okla.; B. F. Barry's Groc. & Mkt., 6700 N.W. 10th St., Oklahoma City 7, Okla.; Belmont Grocery, 2433 N.W. 16th, Oklahoma City 7, Okla.; Bill's Grocery, 545 S.E. 12, Oklahoma City, Okla.; Bi-Rite Grocery, 2248 N.W. 1st, Oklahoma City, Okla.; Bowers Grocery, 2801 So. Western, Oklahoma City 9, Okla.; Boyle Grocery, 1640 N.W. 4th St., Oklahoma City, Okla.; L. T. Bridges, 3413 North Blackwelder, Oklahoma City, Okla.; Burkhart Grocery, 420 N.W. 6th, Oklahoma City 3, Okla.; C. C. Grocery, Britton, Okla.; Chapman Grocery, 1345 N.W. 3rd, Oklahoma City 4, Okla.; City Market, 1209 W. Main, Oklahoma City, Okla.; Clabby Grocery, 1136 S.W. 38th, Oklahoma City 9, Okla.; Community Grocery, 3815 North Indiana, Oklahoma City, Okla.; Cornelius A. Walker, 1911 S.W. 10th, Oklahoma City, Okla.; Corsin's Groc. &

Market, 1727 N.W. 16th, Oklahoma City 6, Okla.; Crawford Grocery, 637 N.E. 4th, Oklahoma City, Okla.; J. R. Goddard Grocery, 2219 Exchange, Oklahoma City 8, Okla.; Crawford Groc., 532 N.W. 4th, Oklahoma City, Okla.; D & H Sundry & Grocery, 3301 S.W. 29th, Oklahoma City, Okla.; Joe Dakil Grocery, 1614 N.E. 13th Street, Oklahoma City 5, Okla.; George Crockett, 919 West Calif., Oklahoma City 4, Okla.; Cross Grocery, 501 S.W. 36th, Oklahoma City 9, Okla.; Crowder IGA, 2836 N.W. 39th, Oklahoma City, Okla.; Davis Grocery, 8920 N. Western, Oklahoma City, Okla.; Drive In Market, 28 NE 23rd, Oklahoma City, Okla.; E & A Grocery, 1018 N. Walnut, Oklahoma City 4, Okla.; Roy R. Edwards Grocery, 2805 N. McKinley, Oklahoma City 6, Okla.; Elledge Grocery, 1300 N. Eastern, Oklahoma City, [fol. 13] Okla.; Ely's Grocery, 1621 N. Independence, Oklahoma City, Okla.; L. E. Eye Grocery, 3532 N.W. 39, Oklahoma City 12, Okla.; Fallwell & Hedges, 644 S.W. 29th, Oklahoma City 9, Okla.; Farrill Grocery, 1805 N.W. 3rd, Oklahoma City, Okla.; Fine's Market, 2800 S.W. 29th, Oklahoma City, Okla.; Fisher Gro., 27 N.W. 16th, Oklahoma City, Okla.; W. L. Fitzgerald Gro., 4420 South High, Oklahoma City, Okla.; Flurry's Groc., 2101 S. Agnew, Oklahoma City, Okla.; Ford Groc. & Mkt., 4132 E. Reno, Oklahoma City 9, Okla.; George Genzer Groc., Rt. 8, Box 634, Oklahoma City, Okla.; Goddard Grocery, 3021 S. Robinson, Oklahoma City, Okla.; Gordon Groc., 506 S. Robinson, Oklahoma City, Okla.; Gramling Groc., 711 S.W. 7th, Oklahoma City, Okla.; Griswold Groc., 529 S.E. 20th, Oklahoma City, Okla.; Gross Groce , 411 N.W. 26th, Oklahoma City, Okla.; Lee S. Hancock Groc., 5946 N.W. 39th, Oklahoma City, Okla.; Hanley Grocery, 3308 South Agnew, Oklahoma City 8, Okla.; Harth Food Market, 2412 N. Shartel, Oklahoma City 3, Okla.; Higgins Groc. & Mkt., 2423 S. Agnew, Oklahoma City 8, Okla.; Honest Don's, 621 N. Nebraska, Oklahoma City 17, Okla.; Honest Groc. & Mkt., 301 S. Broadway, Oklahoma City, Okla.; Honest John Gro. & Mkt., 501 S. Harvey, Oklahoma City, Okla.; A. J. Hutmacher, 1029 S. May, (Stockyards), Oklahoma City, Okla.; Ingram Groc., 2704 N. Eastern, Oklahoma City, Okla.; Jack's Food Market, 700 N.E. 10th, Oklahoma City 4, Okla.; Jones Food Market, 923 N.W. 6th, Oklahoma City 6, Okla.; Houston T.

Hardy, 2245 N.E. 17th, Oklahoma City, Okla.; Harry's Food Market, 429 E. 4th, Oklahoma City, Okla.; Harvey Street Grocery, 412 S. Harvey, Oklahoma City, Okla.; Heierding Bros., 35 Harrison Ave., Oklahoma City 4, Okla.; Henley's Market, 2538 West Grand, Oklahoma City, Okla.; Hogan Grocery, 1844 N.W. 14th St., Oklahoma City, Okla.; Jones Boys No. 1, 33rd & North May, Oklahoma City, Okla.; Jones Boys No. 2, 117 S.E. 29, Oklahoma City, Okla.; Jones Boys No. 4, 36th & Kelly, Oklahoma City, Okla.; Roy D. Jones, 716 N. Stiles, Oklahoma City 4, Okla.; Frank Kozak, 1103 N.W. 10th, Oklahoma City 6, Okla.; Lakeside Super Mkt. No. 2, 7306 N. Western, Oklahoma City 4, Okla.; Leafgreen Grocery, 4511 North McKinley, Oklahoma City, Okla.; J. A. Lemons, Lemons Grocery, 2224 N.W. 34th, Oklahoma City, Okla.; Lepley Grocery, 1805 Grandada, Oklahoma City, Okla.; Lewis Grocery, Rt. 8, Box 504, Oklahoma City, Okla.; Log Cabin Grocery, 5600 E. Reno, Oklahoma City, Okla.; M & W Grocery, 1620 N.E. 9th Street, Oklahoma City, Okla.; McClain Grocery, 1605 So. Central, Oklahoma City, Okla.; Malan's Grocery, 1145 S.W. 29th, Oklahoma City 8, Okla.; Watson Market, 1510 N. Klein, Oklahoma City 6, Okla.; Midwest Food Mkt., 601 N. Key, Oklahoma City, Okla.; B. E. Miller, Miller Grocery, 1921 S. Central, Oklahoma City, Okla.; Morgan's Food Market, 700 N.W. Britton Ave., Oklahoma City, Okla.; Mullins Food Market, 1441 Westwood, Oklahoma City 9, Okla.; Neighborhood Groc., 2611 N. McKinley, Oklahoma City, Okla.; John A. [fol. 14] Nix Grocery, 5945 S. High, Oklahoma City 9, Okla.; T. Norman's Grocery, 2137 N.W. 39th, Oklahoma City 6, Okla.; Ben Norwood, Norwood's Grocery, 905 N. Eastern, Oklahoma City, Okla.; Parkers Food Mkt., 5017 S.W. 29th St., Oklahoma City, Okla.; Paul's Grocery, 916 N. Lee, Oklahoma City, Okla.; Alvin Poage, 420 S. May, RFD 5, Box 293, Oklahoma City, Okla.; Pope's Grocery, 228 N.E. 3rd St., Oklahoma City, Okla.; Charley Pugsley, 2221 North May Ave., Oklahoma City 7, Okla.; E. G. Putman, 702 N.W. 4th, Oklahoma City 3, Okla.; Ralph's Food Store, Ralph S. Taylor, 2901 N. Portland, Oklahoma City, Okla.; Renshaw Grocery, 622 N. Robinson, Oklahoma City 3, Okla.; Roddy's Grocery, 317 S.E. 42nd, Oklahoma City, Okla.; A. N. Samara, 109 South Francis, Oklahoma City 2, Okla.; Simp-

son Grocery, 2300 N.W. 17th St., Oklahoma City 7, Oklahoma; 77 Foods, 5219 S. Shields, Oklahoma City, Okla.; Shadid's Grocery, 1700 E. 10th, Oklahoma City, Okla.; Shaffer Bros., 2021 S. Agnew, Oklahoma City, Okla.; Bill Shane, 5801 N.W. 41, Oklahoma City, Okla.; Sims Grocery, Route 3, Box 135, Oklahoma City, Okla.; Smith's Grocery, 2500 SW 38th St., Oklahoma City, Okla.; Snow & Barnhart, 731 W. Reno, Oklahoma City, Okla.; Louie J. Speed's Food, 1455 Westwood, Oklahoma City, Okla.; Louie J. Speed's Food, 36th & Shartel, Oklahoma City, Okla.; Speeds & Jones Gro., 3800 S. Walker, Oklahoma City, Okla.; Spencer's Super Market, 1302 Lockheed, Midwest City, Okla.; Spencer Super Market No. 2, 4000 S.E. 15th, Oklahoma City 9, Okla.; W. H. Stevens, 3701 S. Shields, Oklahoma City, Okla.; Atockton's Foodliner, 7509 SE 15th, Oklahoma City, Okla.; Stockton's Super Mkt., 1912 N.E. 23rd St., Oklahoma City, Okla.; W. B. Stone, Stone's Grocery, 1515 S.W. 15th, Oklahoma City, Okla.; Stop & Shop Groc. & Sta., 5900 E. Reno, Oklahoma City, Okla.; Ted Swingle Gro., 3132 N. Drexel, Oklahoma City, Okla.; Inez Taylor, Cap. Hill Sta., Bx 4042, Oklahoma City 9, Okla.; L. M. Taylor, 401 S.E. 22nd Street, Oklahoma City, Okla.; Ted's Groc. & Mkt., 422 N. Stiles, Oklahoma City, Okla.; Tharps Grocery, George Tharp, 1100 N.E. 8th, Oklahoma City, Okla.; Thomas Grocery, 37 S.W. 22nd, Oklahoma City, Okla.; Tiemier Grocery, 528 E. Park, Oklahoma City 4, Okla.; Tom's Downtown Food Mkt.; 13 South Robinson, Oklahoma City, Okla.; Vinyard Grocery, 3301 S. Kentucky, Oklahoma City 9, Oklahoma; Ralph Wainscott Grocery, 3011 N.W. 28th St., Oklahoma City 7, Okla.; Paul Walker Groc., 2202 S. Central, Oklahoma City, Okla.; Wallis Grocery, 711 N. Douglas, Oklahoma City, Okla.; Walser Grocery, 3300 South McKinley, Oklahoma City 9, Okla.; Walter's Grocery, 400 SW 10, Oklahoma City, Okla.; Henry Ward Groc., 1169 N. Eastern, Oklahoma City 5, Okla.; S. J. Ward Gro. & Mkt., 2401 S. Agnew, Oklahoma City, Okla.; Fred Watkins Food Mkt., 4009 North MacArthur, Oklahoma City, Okla.; Wehba's Grocery, 1426 NE 4th, Oklahoma City, Oklahoma; Webha's Food Store, 700 E. 7th St., Oklahoma City 4, Okla.; Western Fruit Market, 430 S. Western, Okla-
[fol. 15] homa City, Okla.; Westcott Groc., 2110 N. Lottie, Oklahoma City, Okla.; White Orchard Grocery, Louis Do-

minge, 1142 N. Eastern, Oklahoma City, Okla.; Wildman Grocery, 616 NW 6th, Oklahoma City, Okla.; Wilson & Son. Gro., 303 SE 29th St., Oklahoma City, Okla.; Mr. Don Witten, Box 8253, Oklahoma City, Oklahoma; A & B Grocery, 1440 NE 5th, Oklahoma City, Okla.; Acme Food Market, 900 NE 8th, Oklahoma City, Okla.; Army Food Store, 901 NE 6th, Oklahoma City 4, Okla.; B & C Groc., J. L. Best, 838 S.E. 29th, Oklahoma City, Okla.; B & L Grocery, 1544 NW 2nd, Oklahoma City 4, Oklahoma; Bailey's Grocery, 1700 NW 2nd, Oklahoma City, Okla.; Belford Grocery, 4621 South Shields, Oklahoma City, Okla.; Brannon IGA Foodliner, 4511 S.E. 29th, Oklahoma City 15, Okla.; L. I. Brust, 1315 N. Ross, Oklahoma City 7, Okla.; Jack Buchanan, 605 So. Shartel, Oklahoma City, Okla.; C & D Market, 1524 N. McKinley, Oklahoma City, Okla.; Campbell Bros. Food Market, 114 N.E. 2nd, Oklahoma City 4, Okla.; R. A. Chandler, Chandler's Grocery, 1649 N.W. 10th St., Oklahoma City, Okla.; Coomgs Groc. & Mkt., 3018 N. Penn., Oklahoma City, Okla.; Cowen Grocery, 239 SW 29, Oklahoma City 9, Okla.; Crescent Market, Plaza Court, Oklahoma City, Okla.; Dale's Food Market, 409 NW 30th, Oklahoma City, Okla.; Don Grocery, 200 Harrison, Oklahoma City, Okla.; Edd's Super Mkt., 330 W. Reno, Oklahoma City, Okla.; W. S. Elkin, 1332 SW 35th, Oklahoma City 8, Okla.; Elske Grocery, 715 North Oklahoma, Oklahoma City 4, Okla.; F & J. Grocery, 1327 Linwood, Oklahoma City 6, Okla.; Fletcher's Grocery, 2519 W. Main, Oklahoma City, Okla.; Food Town Market, 4616 N. Western, Oklahoma City 18, Okla.; Foust Groc. & Mkt., 1118 NW 96th, Britton, Okla.; G & W Groc. & Mkt., 107 S. Broadway, Edmond, Okla.; Garrett Food Market, 1740 NW 10th, Oklahoma City, Okla.; Greenhaw Market, B. C. Greenhaw, 29th & Air Port, P.O. Box 5536, Midwest City, Okla.; Hagee's Grocery, 1803 NE 23rd, Okla. City 5, Okla.; Hager's Grocery, 1137 N. Geary, Oklahoma City 4, Okla.; Hambrick Gro. & Mkt., 4214 N. Western, Okla. City, Okla.; Howard's Grocery, 3315 N. Shartel, Oklahoma City 3, Okla.; Hunt Grocery, 5711 N. Western, Oklahoma City, Okla.; Johnson's Food Market, 305 N.W. 23rd, Oklahoma City 3, Okla.; R. Gilbert Johnson Johnson's IGA Super Mkt., 3701 N. Young, Oklahoma City, Okla.; Jones Boys #5, 1323 S. Agnew, Oklahoma City, Okla.; Jones Boys #6, 131 SE 44th,

Oklahoma City, Okla.; Jones Boys #7, 500 NE 6th, Oklahoma City 4, Oklahoma; Jones Boys #8, 2842 NW 10th, Oklahoma City, Okla.; Joslin Grocery, 3235 N.W. 23rd, Oklahoma City, Okla.; Henry Kamp, 1314 NW 25th, Oklahoma City 6, Okla.; Chick Kanaly, 2412 N. Robinson, Okla. City 3; Kennard Grocery Co., 2309 NW 12, Oklahoma City, Okla.; Kittrell Grocery, 616 NW 3rd, Oklahoma City, Okla.; Kimberlings' Grocery, 715 N.W. 50th St., Oklahoma City, Okla.; Kimberling Portland Ave., 1515 N. Portland, Oklahoma City, Okla.; Lakeside Super Market, 7513 N. May, [fol. 16] Oklahoma City 16, Okla.; Ted Linns Grocery, 1244 S.W. 25th St., Oklahoma City, Okla.; Lottie Food Mkt., 2147 N. Lottie, Oklahoma City, Okla.; M & D Grocery, 1917 S. May, Oklahoma City, Okla.; McCann's Cash Groc., 530 N.W. 8th St., Oklahoma City, Okla.; McCormick's Grocery, 1319 N. Ellison, Oklahoma City, Okla.; Curtis McMurran, 729 North Ellison, Oklahoma City 6, Okla.; Mae's Grocery, 609 North Durland, Oklahoma City 4, Oklahoma; Miskovsky Foods, 23rd & Drexel Streets, Oklahoma City 7, Oklahoma; Nayfa Grocery & Mkt., 6714 North Western, Oklahoma City, Okla.; Nichols Groc., 2303 So. Penn, Oklahoma City, Okla.; Norton Grocery, 2210 Classen, Oklahoma City, Okla.; O. K. Market, 1600 N.E. 8th St., Oklahoma City, Okla.; Oden Grocery, 343 S.E. 44th, Oklahoma City 9, Okla.; Odom's Red Bud Market, 421 S.W. 44th, Oklahoma City, Okla.; Pierce Grocery, 1530 NW 7th, Oklahoma City, Okla.; C. C. Precure, Box 8816, Oklahoma City, Okla.; Rahill's Food Town, 2900 SW 29th, Oklahoma City 8, Okla.; Ralph's Grocery, 914 NE 8th, Oklahoma City 4, Okla.; Ranch House Market, 1137 West Reno, Oklahoma City, Okla.; Rhoade's Grocery, 2407 S. Central, Oklahoma City 9, Okla.; Runge Grocery, 3700 S. Portland, Oklahoma City 8, Okla.; Sanders Food Store, P.O. Box 181 W, Oklahoma City, Okla.; Sage Food Mkt., 2803 NW 12th St., Oklahoma City, Okla.; Scott's Food Mart, 2517 S. Central, Oklahoma City, Okla.; Scott's Food Mart #2, 3940 NW 10th, Oklahoma City 7, Okla.; H. S. Shadid, 2918 N. Penn, Oklahoma City 6, Okla.; Shulls Groc. & Mkt., 2119 S. May, Oklahoma City, Okla.; Simpson Grocery, 2204 N. Kelley, Oklahoma City 5, Okla.; Singley's Grocery, 1235 N. Kelham, Oklahoma City, Okla.; C. A. Smith, 1138 NE 10, Oklahoma City 4, Okla.; Smith-Grider Food Store, 5601

S. Penn, Oklahoma City, Okla.; Star Cash Grocery, 1900 N.W. 12th, Oklahoma City, Okla.; Stone's IGA Foodliner, 2322 N. Villa, Oklahoma City, Okla.; Tharp's Tip Top Market, 2834 SW 29th St., Oklahoma City, Okla.; Thompson Food Market, 3405 North Villa, Oklahoma City, Okla.; Thornes Grocery, 1601 MacArthur Blvd., Oklahoma City, Okla.; George V. McFeely, Vergil's Food Mkt., 1316 S. Agnew, Oklahoma City, Okla.; Whittaker #1, 5720 NW 39th, Oklahoma City 12, Okla.; Whittaker #4, 3629 NW 10th, Oklahoma City 8, Oklahoma; R. O. Wyatt, 3515 S. Penn, Oklahoma City 6, Okla.; Mr. C. T. Wilson Grocery, 702 S. Walker, Oklahoma City, Okla.; Wynne Grocery & Mkt., 3416 S. Linn, Oklahoma City 8, Okla.; A. L. Young Grocery, 740 N. Indiana, Oklahoma City, Okla.; Younts Food Store #2, 3720 So. Indiana, Oklahoma City, Okla.; Yount Food Mkt., 4404 N. Western, Oklahoma City 6, Okla.; Wood Grocery, Route 2, Bixby, Okla.; E. L. Loyd, Loyd Groc. & Mkt., Broken Arrow, Okla.; Fitzgerald Groc., 6449 NW 50th St., Bethany, Okla.; Morris Grocery, 5112 S. Blackwelder, Oklahoma City, Okla.; Taylor's Grocery, 405 S. Phillips, Oklahoma City, Okla.; Cox By-Er-Rite, 324 S.E. 15th, Oklahoma City, Okla.; Beeby Food Store, Box 206, [fol. 17] Marshall, Okla.; H. B. Poulton, Sperry, Okla.; J. B. White Food Market, 14 West 2nd, Sand Springs, Okla.; George Abdo, Abdo Food Market, 4506 S. Peoria Ave., Tulsa, Okla.; Armstrong's Market, 5041 E. Admiral Place, Tulsa, Okla.; Avondale Grocery, 3014 East 15th, Tulsa, Okla.; B & B Grodery, 2625 W. 40th, Tulsa, Okla.; B & H Super Market, 1401 W. 3rd, Tulsa, Okla.; B & N Grocery, 1202 W. Archer, Tulsa, Okla.; H. A. Baker's Grocery & Mkt., 1540 East 8th, Tulsa, Okla.; J. V. Baker, Baker's Market, 6500 E. 11th, Tulsa 15, Okla.; Beaver's Grocery, 1020 N. Peoria, Tulsa, Okla.; Mrs. H. Bechtold, Bechtold Grocery, 428 S. Yale, Tulsa 4, Okla.; Bennett Grocery, 1147 North Utica, Tulsa, Okla., Bud Benton's Food Store, 600 North Boulder, Tulsa, Okla.; Berryhill Grocery, Box 508, Berryhill Addition, Tulsa, Okla.; Bingham's Grocery, 540 S. 38th, West Ave., Tulsa, Okla.; Bob East's Food Market, 1344 East 15th, Tulsa, Okla.; R. F. Tanner, Bob's Grocery & Market, 2447 E. 7th Street, Tulsa 4, Okla.; Bohling Grocery, 1404 East 1st, Tulsa, Okla.; Borum's Grocery,

1241 N. Cincinnati, Tulsa, Okla.; Bragg Grocery & Mkt., 1212 East 1st, Tulsa, Okla.; Brookside Market, 3620 So. Peoria, Tulsa, Okla.; Brunner Grocery, 615 So. 65th West Ave., Tulsa, Okla.; Burrus Grocery, 718 North Lewis, Tulsa, Okla.; Butterfield Groc. & Mkt., 3235 E. 7th, Tulsa, Okla.; Buy-Rite No. 2, R. W. Brinlee, 1324 E. 11th, Tulsa, Okla.; C & H Food Store, 1423 N. Greenwood, Tulsa, Okla.; Cadenhead Grocery, 1007 N. Florence Pl., Tulsa, Okla.; Carlile Grocery, 2747 E. 15th, Tulsa, Okla.; Champion Food Store, 1510 S. Peoria, Tulsa, Okla.; Chapman Grocery, 1105 N. Columbia, Tulsa, Okla.; Cheyenne Grocery, 211 W. 11th, Tulsa, Okla.; Chisler & Schell Grocery, 150 N. Madison, Tulsa, Okla.; Claud's Grocery, 4112 S. 26 W. Ave., Tulsa, Okla.; Colbert's Grocery, 2115 E. Admiral, Tulsa, Okla.; Coleman Grocery, 2636 E. Ute, Tulsa, Okla.; Colonial Market, 7004 E. Admiral Place, Tulsa, Okla.; J. C. Horn, Consumers K. C. Market, 113 S. Boston, Tulsa, 3, Oklahoma; S. L. Cook, 2134 S. Maybelle, Tulsa 7, Okla.; Copelands Market, 2016 East 11, Tulsa 4, Okla.; Crescent Food Mkt., 342 E. Apache, Tulsa, Okla.; Craig's Quality Market, 3020 E. 15th, Tulsa, Okla.; Davis Food Market, 6510 E. Admiral Place, Tulsa, Okla.; Davis Grocery, 621 S. 53rd Ave., Tulsa, Okla.; Dickinson-Inbody Mkt., 5503 East Tecumseh, Tulsa, Okla.; Dixon's Fresher Foods, 4304 East 11, Tulsa, Okla.; Dunn Groc. & Mkt., 3901 E. Admiral Place, Tulsa, Okla.; Eleventh St. Fruit Mkt., 3002 E. 11th, Tulsa, Okla.; Faulkner Grocery, 1236 N. St. Louis, Tulsa, Okla.; Fifth St. Market, 730 So. 5th, Tulsa, Okla.; G. E. Fikes, Fikes Food Store #1, 2006 So. Utica, Tulsa 4, Okla.; Frank Bollomy, Food Town Market, 2020 E. 3rd, Tulsa 4, Okla.; Frank's Grocery, 2308 So. Quannah, Tulsa, Okla.; Gaine's Groc., 1220 W. Archer, Tulsa, Okla.; George & Glenn Naufeh Groc., 1018 W. 23rd St., Tulsa, Okla.; Tom Gingles Groc., 5722 East Tecumseh, Tulsa, Okla.; Golden Food Store, 5 East 1st, Tulsa, Okla.; Grant's Groc., 516 N. Boston, Tulsa, Okla.; G. F. Green Groc. & Mkt., 1002 North St. Louis, Tulsa, Okla.; Gregory Market, 521 S. Norfolk, Tulsa, Okla.; H & B Grocery, 1501 S. 33rd W. Ave., Tulsa, Okla.; Hale's Grocery, 1142 S. Rockford, Tulsa, Okla.; Harrison's Groc., 7115 W. 7th, Tulsa, Okla.; Harold E. Davis Groc., 1418 W. Archer, Tulsa, Okla.; Hine Groc. & Mkt., 538 S. Columbia,

Tulsa, Okla.; Holdridge Market, 530 S. Harvard, Tulsa,
[fol. 18] Okla.; Ideal Food Market, 1107 North Main, Tulsa,
Okla.; Jim's Grocery, 5502 E. Tecumseh, Tulsa, Okla.; Jim's
Groc. & Mkt., 2700 West Edison, Tulsa, Okla.; Jitney-
Jungle Groc., 834 N. Sherican, Tulsa, Okla.; C. K. Jones &
Son, 3948 E. 11th St., Tulsa, Okla.; Scott E. Johnson, 1228
S. Wheeling, Tulsa, Okla.; Kenney's Federated Foods, 908
W. 1st, Tulsa, Okla.; Kenney's Groc., 216 W. 3rd, Tulsa,
Okla.; A. H. Kirsh Groc., 3001 E. Admiral Pl., Tulsa, Okla.;
Kline's Gro. & Mkt., 2403 S. Quannah, Tulsa, Okla.; Harry
Kravetz, Kravetz & Son Groc., 4907 E. 11th, Tulsa 4, Okla.;
Leak Groc., 1223 N. Lewis, Tulsa, Okla.; Lee's Food Mkt.,
502 E. Young, Tulsa, Okla.; Legates Groc., 2020 N. Lewis
Place, Tulsa, Okla.; Madison's Market, 3102 E. Archer,
Tulsa, Okla.; Miller Food Mkt., 2914 E. 3rd, Tulsa, Okla.;
Mitchell Groc., 302 S. Phoenix, Tulsa, Okla.; Model Groc.,
2703 E. Admiral Pl., Tulsa 4, Okla.; Mr. R. W. Hubbard,
Modern Food Mkt., 1124 S. Denver, Tulsa, Okla.; Naifeh
Bros. Gro., 1911 E. Admiral, Tulsa, Okla.; Orr's Food Mkt.,
4174 E. Admiral Place, Tulsa, Okla.; Patterson's Groc., 127
S. 36th West Ave., Tulsa, Okla.; Paul's Groc., 7520 E.
Apache, Tulsa, Okla.; Payton Groc., Rt. 5, West Tulsa,
Okla.; Guy E. Pharris Groc., 1506 S. Utica, Tulsa, Okla.;
Perry C. Isom, Perry Food Mkt., 71 N. Lewis, Tulsa 4,
Okla.; Guy E. Pharris Groc., 106 S. Utica, Tulsa, Okla.;
Polly Ann's Mkt., 1211 N. Utica, Tulsa, Okla.; Ridgeway
Food Store, 1441 N. Yale, Tulsa, Okla.; Right Way Food
Mkt., 621 West 5th, Tulsa, Okla.; M. S. Rogers, Rogers
Food Store, 1542 E. 15th, Tulsa 5, Okla.; Rommey's Food
Mkt., 824 N. Main, Tulsa, Okla.; Rowan & Petty Fine Foods,
1829 E. 21st, Tulsa 4, Okla.; Sam Mizel, Sam's Food Mkt.,
231 W. 9th, Tulsa 5, Okla.; Sam's Thrif-T-Wise Store, 15
North Harvard, Tulsa, Okla.; Shore & Cottrell Groc., 3412
So. Peoria, Tulsa, Okla.; Simpson's Groc., 1133 N. Utica,
Tulsa, Okla.; A. H. Sipes, Sipes Nu-Lo Mkt., 1st & Lewis,
Tulsa 4, Okla.; L. St. Pierre, 716 N. Utica, Tulsa 6, Okla.;
Stop & Shop Mkt., 3402 So. Peoria, Tulsa, Okla.; R. L.
Stout, Stout Service Store, 1127 N. Main, Tulsa 6, Okla.;
Super Food Market, 4908 Sand Springs Road, Tulsa, Okla.;
Swyden's Groc., 828 S. Peoria, Tulsa, Okla.; Thomas Gro.
& Mkt., 701 S. Maybelle, Tulsa, Okla.; Thrift Food Mkt., 110

East 1st, Tulsa, Okla.; Town Crier Groc., 1123 S. Harvard, Tulsa, Okla.; V & E Groc., 1544½ E. Admiral, Tulsa, Okla.; Victor Food Market, 502 S. Victor, Tulsa, Okla.; Villereal Groc., 430 N. Detroit, Tulsa 6, Okla.; Weeks Grocery, 758 S. Wheeling, Tulsa, Okla.; Qest Newton St. Groc., 525 West Newton, Tulsa, Okla.; William Naifeh Groc., 1841 N. Madison, Tulsa, Okla.; Jack Williams Groc., 6440 Sand Springs Rd., Tulsa, Okla.; Wilson & Daughter Groc., 2917 N. Garrison, Tulsa, Okla.; Winn Bros. Groc., 1507 N. Cincinnati, Tulsa 6, Okla.; W. E. Dalphon, Wolferman's, 224 E. 15th, Tulsa, Okla.; C. L. Boiles Gro., Dutch Boiles, 200 E. 14th, [fol. 19] Ada, Okla.; Martha Brittain, Hi Way 19 & 10th St., Ada, Okla.; M. L. Butler Groc., 206 W. Main, Ada, Okla.; Conda's Cash Groc., 620 N. Miss., Ada, Okla.; Dicus Cash Super Mkt., 223-225-227 W. Main, Ada, Okla.; Evan's Gro. & Mkt., 420 W. Main, Ada, Okla.; Ferry Groc., 530 W. 7th, Ada, Okla.; King's Mkt., 201 N. Miss., Ada, Okla.; Kleeper's Gro. & Stn., Rt. 5, Ada, Okla.; Log Cabin Gro., R. R. #4, Ada, Okla.; M & P Food Store, Ada, Okla.; Mershon Groc., 303 S. Johnson St., Ada, Okla.; Zelma Dean Parker, Box 642, Kada, Ada, Okla.; Smith's Country Store, 531 W. Main, Ada, Okla.; Bill Wood Groc., 602 W. Main, Ada, Okla.; C. W. Bailey Groc., 904 S. Main, Altus, Okla.; W. A. Ballard's Groc., Rt. 1, Altus, Okla.; Earnest Kizziar Groc., 700 W. Broadway, Altus, Okla.; Marty's Groc., 500 N. Navajoe St., Altus, Okla.; Pay & Take Groc., 920 N. Lee, Altus, Okla.; South Side Gro. & Mkt., 1520 S. Main, Altus, Okla.; Stop & Stop Groc., 501 E. Bdwy, Altus, Okla.; H. D. Snell, United Groc. Co., Altus, Okla.; Woods Famous Foods, 900 E. Bdwy., Altus, Okla.; The Food Mart, 518 E. Central, Anadarko, Okla.; Giddings & Barr, 307 SW 6th, Anadarko, Okla.; J. A. Houser Gro., 4058 Kentucky, Anadarko, Okla.; Vernon Leach, Leach Mkt., 201 W. Main, Anadarko, Okla.; Rogers Groc., 415 Main St., Anadarko, Okla.; Schaubs Food Mkt., 201 W. Broadway, Anadarko, Okla.; Joe Williams, 129 W. Broadway, Anadarko, Okla.; Alexander Grocery, Rt. 2, Box 145 B, Arcmore, Okla.; Brooks Food Liner, Broadway & L. St., Ardmore, Okla.; H. E. Brooks Gro., 125 7th St. NE., Ardmore, Okla.; C. W. Coe Groc., 519 C. St., SE, Ardmore, Okla.; Corner Groc., 803 N. 2nd, Ardmore, Okla.; Coubh Food Mart, 501 6th St., NW, Ardmore, Okla.; J. W. Davis,

213 C. NW, Ardmore, Okla.; Dunn Grocery, 309 D, SE, Ardmore, Okla.; Elle's Food Mart, 1411 Chickashaw, Ardmore, Okla.; Ezy Way Food Store, 108 A, NE, Ardmore, Okla.; Heartsill Groc., 412 C St., SW, Ardmore, Okla.; Gene Howard Groc., 514 F. St., NW, Ardmore, Okla.; Hunt's Groc. & Mkt., 736 Ave., NE, Ardmore, Okla.; J. H. Lasley Gro. & Mkt., 501 E. Main, Ardmore, Okla.; Jimmy Lewis Gro. & Mkt., 118 E. Main St., Ardmore, Okla.; Moore's Groc., 1401 W. Broadway, Ardmore, Okla.; Morgan Gro. & Mkt., 701 6th Ave., NE, Ardmore, Okla.; Taylor's Groc., 1023 A. St., NE, Ardmore, Okla.; Thompson Food Mart, 1600 McLish, Ardmore, Okla.; J. O. Trotter, 927 C St., SE., Ardmore, Okla.; Buy Right Groc., 122 W. Frank Phillips, Bartlesville, Okla.; England's Groc., 210 W. 11, Bartlesville, Okla.; Food Spot, 100 Cherokee, Bartlesville, Okla.; Hammons Grocery, First & Penn, Bartlesville, Okla.; Ideal Food Store, 219 E. 3rd, Bartlesville, Okla.; Landers Bros., 201 W. Frank Phillips, Bartlesville, Okla.; Mc & Mc's Groc., 419 E. Third St., Bartlesville, Okla.; Gus Munich Groc. & Mkt., Rt. 3, Box 109, Bartlesville, Okla.; Phelps Food Market, 1708 W. Frank Phillips, Bartlesville, Okla.; The Q Store, 333 Keeler, Bartlesville, Okla.; Tuxedo Gro., 3700 E. Tuxedo Blvd., [fol. 20] Bartlesville, Okla.; W. A. Ward, 1218 East 6th, Bartlesville, Okla.; C. E. Davis, 411 No. 4th St., Blackwell, Okla.; Davis Groc. #2, 701 E. Bridge, Blackwell, Okla.; East Side Groc., 311 South C St., Blackwell, Okla.; Fey's Market, Box 456, Blackwell, Okla.; Gurley Groc., 424 East McKinley, Blackwell, Okla.; Harry's Groc. & Mkt., 104 W. Armory, Blackwell, Okla.; Hills Groc., 215 S. 10, Blackwell, Okla.; Killion Groc. & Mkt., 314 S. 6th, Blackwell, Okla.; Ray H. Miller, 916 West Bridge, Blackwell, Okla.; James H. Morgan, 402 W. Dewey, Blackwell, Okla.; Murray Groc., 1114 W. Bridge, Blackwell, Okla.; North Main Groc., 501 N. Main, Blackwell, Okla.; E. W. Park Day & Night Groc., 424 S. Main, Blackwell, Okla.; Raffety Groc. & Mkt., 126 N. 1st, Box 554, Blackwell, Okla.; Ruth's Groc. & Mkt., 214 So. D. Blackwell, Okla.; Snow White Groc., 217 S. Main, Blackwell, Okla.; Wilt Gro. & Mkt., 724 W. Blackwell, Blackwell, Okla.; Broken Arrow Warehouse, Broken Arrow, Okla.; East Side Groc., 111 N. Main, Broken Arrow, Okla.; Foster Gro. & Mkt., 101-103 S. Main, Broken Arrow, Okla.; Reid Store,

Box 64, Broken Arrow, Okla.; Stanfill Groc., Broken Arrow, Okla.; Town Crier Groc. & Mkt., 112 S. Main, Broken Arrow, Okla.; Whiteley Bros. Groc., 717 S. Main, P.O. Box 165, Broken Arrow, Okla.; Gene's Groc. & Mkt., P.O. Box 558, Carnegie, Okla.; Rogers Groc., Box 5, Carnegie, Okla.; Town & Country Store, Carnegie, Okla.; John A. Weaver, Box 404, Carnegie, Okla.; Otto B. Whitley, Rt. 1, Carnegie, Okla.; A-1 Groc., Annie L. Morrison, 415 S. 12th St., Chickasha, Okla.; W. D. Brooks Groc., 901 S. 4th St., Chickasha, Okla.; Clayton's Groc., 1402 S. 7th, Chickasha, Okla.; Lloyd Cole Groc., 1601 Grand, Chickasha, Okla.; Walter R. Courtright Groc., 1105 Choctaw, Chickasha, Okla.; Everett's Gro. & Mkt., 428 S Third, Chickasha, Okla.; Farmer's Grocery, 516 Choctaw, Chickasha, Okla.; Olin Fowler, 801 S. 4th St., Chickasha, Okla.; E. A. Hall, 602 S. 4th St., Chickasha, Okla.; J. T. Hicks, 927 Idaho, Chickasha, Okla.; Mrs. Alfred Hill's Grocery, 727 Dakota Avenue, Chickasha, Okla.; Hopkins & Jenicek Groc., 415 Choctaw, Chickasha, Okla.; John's Groc. & Mkt., 319 Choctaw, Chickasha, Okla.; McWhorter Bros., 802 Chickasha Ave., Chickasha, Okla.; J. W. Morgan, 1006 Choctaw, Chickasha, Okla.; Nations Food Mkt., 1502 Missouri, Chickasha, Okla.; H. E. Ratliff, 902 Frisco, Chickasha, Okla.; Russell Long Groc., 316 South 4th, Chickasha, Okla.; Texaco Gro., 1228 S. 4th St., Chickasha, Oklahoma; Wright's Food Store, 514 So. 17th St., Chickasha, Okla.; Bestway Mkt., 817 Frisco, Clinton, Okla.; Hardin Groc., 500 So. 13th, Clinton, Okla.; Humble Food Store, 624 S. 10th St., Clinton, Okla.; Martin's Groc., 507 Choctaw, Clinton, Okla.; Nash-Finch Co., 116 Frisco Ave., Clinton, Okla.; Patton's Grocery, Box 535, Clinton, Okla.; Pucketts Food Store, 520 Avant, Clinton, Okla.; Sights Grocery, 1511 [fol. 21] Nowahy, Clinton, Okla.; Allton & Barnes, 1047 E. Main, Cushing, Okla.; B & E Groc., 124 W. Broadway, Cushing, Okla.; Ben's Groc., 1050 East Moses, Cushing, Okla.; Brownlee Groc., 824 E. Main, Cushing, Okla.; Eddie's Groc., 831 E. Main, Cushing, Okla.; Escott's Red Bud Market, 310 E. Broadway, Cushing, Okla.; Hearn Groc., Box 336, Cushing, Okla.; Hensley's Grocery, E. A. Hensley, Cushing, Okla.; C. W. Lewis, 423 East 7th, Cushing, Okla.; Main St. Food Mkt., 409 E. Main, Cushing, Okla.; Sewell's Food Store, 221 N. Cleveland, Cushing, Okla.; Wilcoxon's

Food Store, 512 N. Steele, Cushing, Okla.; A. L. Wright's Groc., 802 E. Main, Cushing, Okla.; H. G. Hood, Box 11, Davidson, Okla.; Hickerson Groc. & Sta., Rt 1, Davidson, Okla.; Middick's Grocery, P.O. Box 278, Davidson, Okla.; Valley Cash Store, Rt. 1, Davidson, Okla.; Wilson's Gro., Box 98, Davidson, Okla.; P. R. Armstrong, 117 North Ohio, Drumright, Okla.; C & H Gro. & Mkt., 623 N. Harley, Drumright, Okla.; J. O. Warlick, Crescent Market, 418 East Bdwy, Drumright, Okla.; J & J Grocery & Market, 217 E. Broadway, Drumright, Okla.; Nu-Way Gro., 104 E. Bdwy, Drumright, Okla.: People's Grocery, 327 E. Broadway, Drumright, Okla.; Allen's Grocery, 1204 Cypress, Duncan, Okla.; Armstrong Grocery, 1414 West Main, Duncan, Okla.; Arnold's Grocery, 1012 S. 9th St., Duncan, Okla.; Boyd's Groc. & Mkt., 906 Boisdarc, Duncan, Okla.; Cedar Groc. & Mkt., 1001 Cedar Ave., Duncan, Okla.; Drive-In Food Mkt., 917 Willow, Duncan, Okla.; Goodner Super Mkt., 1003 Walnut, Duncan, Okla.; Goodner Super Mkt. #2, 305 E. Main St., Duncan, Okla.; Griffith Grocery, 17 North 7th, Duncan, Okla.; Jones IGA, 818 Walnut, Duncan, Okla.; Dewey Meazell Grocery, 701 S. 9th, Duncan, Okla.; Open Front Food Mkt., 415 Main St., Duncan, Okla.; Joe Parks Groc., 27 North 7th St., Duncan, Okla.; Van's Food Mkt., 211 E. Chesnut, Duncan, Okla.; Walker Grocery, 913 N. 11th, Duncan, Okla.; Davis Food Store, 612 N. 1st, Durant, Okla.; Green Spray Market, 517 N. 1st, Durant, Okla.; Handy Food Mart, 433 So. 9th St., Durant, Okla.; W. A. Knight, 424 W. Main, Durant, Okla.; Mack's Groc. & Mkt., 132 W. Main, Durant, Okla.; Gene Moseley & Basil Wright, 124 N. 2nd St., Durant, Okla.; Ira Raybo, Inc., Route 2, Durant, Okla.; White House Groc., 124 North 3, Durant, Okla.; R. C. Atkinson, Edmond, Okla.; Boulevard Super Market, 507 S. Boulevard, Edmond, Okla.; Inland Mercantile Co., Rt. 1, Edmond, Okla.; Paul Lamar, Edmond, Okla.; Mrs. Homer Thompson, Rt. 2, Box 190, Edmond, Okla.; Bonifield Grocery, 1032 W. 3rd, Elk City, Okla.; Fox Groc. & Mkt., 1031 W. 5th, Elk City, Okla.; Graham Grocery, 1111 W. 3rd St., Elk City, Okla.; Hodges Super Mkt., 1923 W. 3rd, Elk City, Okla.; Kilpatricks Groc., 224 W. 6th, St., Elk City, Okla.; King's Groc. & Mkt., 802 W. 2nd St., Elk City, Okla.; Nunley's Food Store, 214 W. Broadway,

[fol. 22] Elk City, Okla.; Alfred Rennels Groc., Route 3, Elk City, Okla.; United Cash Stores, Elk City, Okla.; Allison Grocery, 105 S. Rock Island, El Reno, Okla.; Bross Grocery, 1107 Sunset, El Reno, Okla.; East Side Home Gro., Mrs. W. E. Daubenheyer, 609 S. Roberts, El Reno, Okla.; El Reno Fruit Market, 104 S. Choctaw, El Reno, Okla.; Hix's, 319-321 S. Bickford, El Reno, Okla.; Morris D. Hurst, 1021 E. Rogers, El Reno, Okla.; Jackson Market, 900 S. Hadden, El Reno, Okla.; Johnston's Groc. & Serv., 1220 Sunset Drive, El Reno, Okla.; Lovell's Market, 1118 So. Rock Island, El Reno, Okla.; Sno Gro., 905 S. Choctaw, El Reno, Okla.; B. T. Conway, Sunset Market, 500 Sun Drive, El Reno, Okla.; Ward W. Hix, 319-321 So. Bickford, El Reno, Okla.; Neighborhood Grocery, 1021 E. Rogers, El Reno, Okla.; Tony's Grocery, 622 W. Watts, El Reno, Okla.; Wyne's Groc., 308 North Bickford, El Reno, Okla.; Blakemore's Foodland Store, Box 1602, Enid, Okla.; Chapman's Grocery, 757 North 10th, Enid, Okla.; Charley's Gro. & Mkt., Grand and Main, Enid, Okla.; City Gro. & Mkt., 307 E. Main, Enid, Okla.; Edd's Groc. & Market, 417 N. Grand, Enid, Okla.; Eichinger Grocery, 219 West Wabash, Enid, Okla.; Edwards Groc., 714 N. 20th, Enid, Okla.; Frazier Gro., 609 W. Oak, Enid, Okla.; Gene's Food Market, 510 S. Van Buren, Enid, Okla.; Monroe Groc., 623 W. Market, Enid, Okla.; Morris Groc., 1401 East Main, Enid, Okla.; Peck's Groc. & Mkt., 518 North 10th, Enid, Okla.; Steddum's Groc. & Market, Rt. 4, Enid, Okla.; Stone Groc., Box 2103, Univ. Sta., Enid, Okla.; Hamilton's Cash Groc., 123 North 10, P.O. Box 766, Frederick, Okla.; Loutherback & Son, 117 N. 10, Frederick, Okla.; Tant Gro. & Mkt., 224 West Grand, Frederick, Okla.; United Cash Stores, Frederick, Okla.; West Side IGA Market, 421 West Gladstone, Frederick, Okla.; B & H Groc. & Mkt., P.O. Box No. 505, Granfield, Okla.; C. C. McKinnis, Box 335, Granfield, Okla.; Joe's Grocery, Granfield, Okla.; John O'Bannon, Granfield, Okla.; McLain Bros. Groc., Box 55, Grandfield, Okla.; J. B. Wilburn, Rt. 3, Grandfield, Okla.; Armstrong Grocery, 302 E. Eashington, Guthrie, Okla.; E. J. Birch, 219 S. Drexel, Guthrie, Okla.; Bond's Gro. & Mkt., 117 E. Oklahoma, Guthrie, Okla.; Zelma Howard, 912 W. Mansur, Guthrie, Okla.; Hroeger Grocery, 914 E. Vilas, Guthrie, Okla.; Lake-

view Groc., Route 2, Guthrie, Okla.; McNulty Grocery, 220 East Harrison, Guthrie, Okla.; May's Groc. & Station, 902 W. Noble, Guthrie, Okla.; Midway Food Mkt., 502 N. Wentz, Guthrie, Okla.; Niles Food Mkt., 101 W. Harrison, Guthrie, Okla.; Overlees Groc., 302 W. Noble, Guthrie, Okla.; Henry Rice's Grocery, 514 N. 11th, Guthrie, Okla.; Sturgeon's Grocery, Rt 5, Guthrie, Okla.; L. E. Dicus, 623 W. Main, Henryetta, Okla.; Munford's A. G. Store, Rt. 2, Box 65-A, Henryetta, Okla.; W. R. Stewart's Gen. Store, 808 W. Main, Henryetta, Okla.; Central Apple House, 516 South Main, [fol. 23] Hobart, Okla.; Mama's Food Store, 430 N. Randlett, Hobart, Okla.; Perry's Grocery, 503 S. Main, Hobart, Okla.; Rogers & Peet, 601 So. Main, Hobart, Okla.; Toma Bros. Super Mkt., Hobart, Okla.; W. W. Turnbull Groc., Hobart, Okla.; United Cash Stores, Hobart, Okla.; O. B. Burton, IGA Store, Holdenfille, Okla.; Echo Cash Groc., 400 So. Echo, Holdenville, Okla.; J. O. Elliston, Holdenville, Okla.; — & P Store, Inc., Holdenville, Okla.; Park In Groc. & Mkt., 601 N. Hinchley, Holdenville, Okla.; Piggly Wiggly Groc., Holdenville, Okla.; Carter Food Store, Box 208, Hollis, Okla.; W. W. Hollis, Trade Dollar Groc., 224 E. Broadway, Hollis, Okla.; Paul Metcalf Groc., Hollis, Okla.; S & M Groc., H. R. Stanley, West Broadway, Hollis, Okla.; United Cash Stores, Hollis, Okla.; Bank Groc., Lawton, Okla.; Brammer Groc. & Mkt., 103 So. 11, Lawton, Okla.; Bridges Groc. & Mkt., Eva Bridges, 704 Monroe, Lawton, Okla.; Bryce & Lewis Groc., 11th & G., Lawton, Okla.; R. M. Carr, 1409 Lee Blvd., Lawton, Okla.; Cut Rate Grocery, 308 So. 5th, Lawton, Okla.; Bud Elrod Groc., 1402 Gore, Lawton, Okla.; Four Day Gro., 204 Lee, Lawton, Okla.; Val Frakes, Val Frakes Groc., 528 E., Lawton, Okla.; Galyon's Food Store, 11th & Ferris, Lawton, Okla.; Jack Glasby, 626 E. Ave., Lawton, Okla.; A. B. Gosselin, P.O. Box 426, 518 D. Ave., Lawton, Okla.; Kelly Hillis, 1102 So. 2, Lawton, Okla.; Jimmie Hinson, 407 Dearborn, Lawton, Okla.; Honey's, 1619 So. 11, Lawton, Okla.; Hub Food Store, Sheridan & Cache Road, Lawton, Okla.; Hal Hughes Gro., 1127 Cache Road, Lawton, Okla.; Lake View Super Mkt., 1808 Liberty, Lawton, Okla.; Latimer Groc., 1411 Lee Blvd., Rt. 3, Lawton, Okla.; Liberty Heights Food Store, 17th & Ferris, Lawton, Okla.; Lyle's Groc., 611 Park, Law-

ton, Okla.; Lewis Matthews Groc., 2016 Cache Road, Lawton, Okla.; R. F. Neely, 315 Summit, Lawton, Okla.; Pennywise Grocery, 427 C. St., Lawton, Okla.; Lee Pursley & Son, Glenn R. Pursley, 312 N. 2nd., Lawton, Okla.; R. A. Reeves, 1605 D. Ave., Lawton, Okla.; Roy's Food Store, 2 So. 23, Lawton, Okla.; Dewey Shaw's Food Market 501 So. 3rd, Lawton, Okla.; R. B. Shaw, 26 D. Ave., Lawton, Okla.; Stadium Groc., 1402 Dearborn, Lawton, Okla.; "The Thing", 2310 Gore, Lawton, Okla.; J. T. Wood, 801 Dearborn, Lawton, Okla.; Harold & Sybil Woodward, 1616 South 11, Lawton, Okla.; Andrews Groc., Harold Andrews, Box 401, Locust Grove, Okla.; Bynum Store, J. W. Bynum, P.O. Box 207, Locust Grove, Okla.; Dotson's Grocery, Mrs. J. C. Dotson, Locust Grove, Okla.; Sam's Gro., Route #1, Locust Grove, Okla.; Stafford Grocery, P.O. Box 87, Locust Grove, Okla.; Mrs. Claud Blalock, 207 N. Oklahoma, Mangum, Okla.; Ralph Clabaugh, IGA Store, Mangum, Okla.; E Z Groc. & Mkt., 124 E. Lincoln, Mangum, Okla.; Hawkins Groc., 718 N. Carolina, Mangum, Okla.; Pucketts Cash Groc., Mangum, Okla.; Stop & Shop Food Mkt., 1017 N. [fol. 24] Carolina, Mangum, Okla.; United Cash Stores, Mangum, Okla.; Eagle Market, 1110 E. Miami, McAlester, Okla.; Hagers Market & Groc., 14 West Grand, McAlester, Okla.; M & P Store, Inc., McAlester, Okla.; Sixty St. Groc., 829 So. 6th, McAlester, Okla.; Dewey Treece Grocery, D & Washington, McAlester, Okla.; B & C Groc., 2312 Givson, Muskogee, Okla.; Buck's Grocery, 6060 Dayton, Muskogee, Okla.; City Groc. & Mkt., 109 S. Main, Muskogee, Okla.; Cole & Campbell, Rt. 4, Muskogee, Okla.; Compassi Grocery, Marion Compassi, 558 Altamont, Muskogee, Okla.; V. B. Cox, 1519 East Okmulgee, Muskogee, Okla.; L. M. Crane, Crane's Groc. & Mkt., 1002 West Bdwy., Muskogee, Okla.; Cunningham's Groc., 930 E. Side Blvd., Muskogee, Okla.; Cole General Merchandise, Rt. 4, Hyway 69, Muskogee, Okla.; Denver St. Groc., 319 So. 9th, Muskogee, Okla.; John C. Evans, 1523 Fondulac, Muskogee, Okla.; Food Palace, 1702 W. Okmulgee, Muskogee, Okla.; Frisco Mkt., 215 N. 2nd, Muskogee, Okla.; K. M. Gorman, 436 North 5th St., Muskogee, Okla.; Ralph Gray, Gray's Grocery, 4322 W. Okmulgee, Muskogee, Okla.; O. K. Kourt Groc., Rt. 1, Box 456, Muskogee, Okla.; Langston's Grocery,

402 N. K., Muskogee, Okla.; Lawrence St. Groc., 1107 Lawrence, Muskogee, Okla.; Mr. Layman, Layman's Groc., 527 Dorchester, Muskogee, Okla.; I. W. Little, 2815 W. Broadway, Muskogee, Okla.; McCullough Groc., 302 S. 23rd, Muskogee, Okla.; M & P Store, Main & Bdwy, Muskogee, Okla.; Mallon Groc., 519 S. 20th, Muskogee, Okla.; Frank Priora Grocery, Gibson & Walnut, Muskogee, Okla.; Roberson Groc., 1206 E. Okmulgee, Muskogee, Okla.; Sequoyah Grocery, 210 Cincinnati, Muskogee, Okla.; Snodgrass Groc., 1205 Gibson Street, Muskogee, Okla.; South Side Groc., 802 S. Cherokee, Muskogee, Okla.; Veterans Groc., 4005 W. Okmulgee, Muskogee, Okla.; Kirk N. Walker, 908 Lawrence, Muskogee, Okla.; Warren Engelbrecht, 418 West Okmulgee, Muskogee, Okla.; Weddle's Groc., 820 W. Broadway, Muskogee, Okla.; Weddle's Groc. #2, 611 Chestnut, Muskogee, Okla.; White Front Groc., 24 East Fondulae, Muskogee, Okla.; H. D. Adams Food Mkt., 325 E. Comanche, Norman, Okla.; Al's Cash Groc. & Mkt., 318 E. Main, Norman, Okla.; Buck's Food Basket, 924 N. Flood, Norman, Okla.; Campus Gro. & Mkt., 213 West Boyd, Norman, Okla.; Lee Kidd, Elm St. Groc., 415 Elm St., Norman, Okla.; Greenleaf Food Mkt., 301 So. Porter, Norman, Okla.; Ed Looney, 410 E. Rich, Norman, Okla.; M & P Stores, 303 E. Main, Norman, Okla.; Mack's Food Store, 600 No. Porter, Norman, Okla.; McCall's Super Food Mkt., 301 W. Main, Norman, Okla.; John Morrison, Rite-Way Cash Gro., 315-319 East Eufaula, Norman, Okla.; Oliver's Cash Groc., 516 Iowa, Norman, Okla.; Steer's Food Mkt., 326 East Main, Norman, Okla.; Glen Vaught, 113 E. Vidaway, Norman, Okla.; Franklin Williams, Marketing Dept., Okla. Univ., Norman, Okla.; W. O. Black, Rt. 2, Okemah, Okla.; Burrus Gro. & Mkt., Struggleville, Okemah, Okla.; Hill's Cash Groc., 128 No. 2nd, Okemah, Okla.; A. M. McGee, Rt. 2, Okemah, [fol. 25] Okla.; John Meredith, Okemah, Okla.; Andrina Groc., 204 S. Kearn, Okmulgee, Okla.; Clyde's Groc., 301 W. 6th, Okmulgee, Okla.; Cox Bros. Groc., 300 E. 6th, Okmulgee, Okla.; East Side Mkt. & Groc., 805 E. 6th St., Okmulgee, Okla.; Farmers Exchange, 315 E. 6th, Okmulgee, Okla.; Frisby's Grocery, 800 W. 7th, St., Okmulgee, Okla.; M & P. Store, 219 E. 7, Okmulgee, Okla.; Mathews Groc., 1102 N. Oklahoma, Okmulgee, Okla.; Sorrells Groc., 1330 N.

Oklahoma, Okmulgee, Okla.; Sure Way Store, 302 W. 6th St., Okmulgee, Okla.; Quality Food Store, 1201 E. 13th, Okmulgee, Okla.; Wide Awake Groc., C. R. Ross, 309 E. Main, Okmulgee, Okla.; Ballard Gro., Pauls Valley, Oklahoma; Boiles Groc., 316 W. Grant, Pauls Valley, Okla.; Louie Davis Food Store, 315 S. Willow, Pauls Valley, Okla.; Dewberry Groc., 1200 S. Walnut, Pauls Vallue, Oklahoma; Sam Pope Groc., 619 E. Charles, Pauls Valley, Okla.; Dowdy's Grocery, 126 E. 6th St., Pawhuska, Okla.; Packinghouse Market, 140 E. Main, Pawhuska, Okla.; S. L. Petty, Rt. 1, Pawhuska, Okla.; Serve All Mkt., Pawhuska, Okla.; Soderstrom's Grocery, 635 Kohekmi, Pawhuska, Okla.; Kearney Hill Grocery, Pawnee, Okla.; Hometown Market, 517 Harrison, Pawnee, Okla.; Rogers Groc., Pawnee, Okla.; Thomas General Store, Pawnee, Okla.; Thurber's Grocery, Pawnee, Okla.; Heppler's Groc., 321 Cedar, Perry, Okla.; Gallaway's Food Mkt., Perry, Okla.; Hendren's Food Store, 409 7th St., Perry, Okla.; Linderman Groc., 634 Cedar, Box 11, Perry, Okla.; M & W Food Store, Perry, Okla.; Royal Food Market, 644 Cedar, Perry, Okla.; Wilson Groc., Perry, Okla.; 4-Way Grocery, 701 N. Union, Ponca City, Okla.; H & M. Groc., 416 So. Franklin, Ponca City, Okla.; O. C. Hatfield, 3 & Cleveland, Ponca City, Okla.; Hatfield IGA Foodlin, 1401 N. 7th, Ponca City, Okla.; Jones Groc., 348 S. Osage, Ponca City, Okla.; Leonard's Groc., 601 W. Highland, Ponca City, Okla.; M & W Food Store, 308 W. Grand, Ponca City, Okla.; J. E. Miller Groc., 412 E. South Ave., Ponca City, Okla.; Miller's Thrif-T-Wise, 916 E. Highland, Ponca City, Okla.; J. A. Monsour, Third & Central, Ponca City, Okla.; John Silvy, 1201 West Ponca, Ponca City, Okla.; Union Food Store, 845 N. Union, Ponca City, Okla.; Ray Walton, 917 E. Highland, Ponca City, Okla.; West Grand Market, 421 W. Grand, Ponca City, Okla.; Wilson Groc., 924 So. 4th, Ponca City, Okla.; Gus Wright Groc., 518 S. 2nd, Ponca City, Okla.; Barkley Groc., 109 N. Mission, Sapulpa, Okla.; Beaty Bros., 912 E. Dewey, Sapulpa, Okla.; Joe Ellison's Groc., 101 So. Poplar, Sapulpa, Okla.; Farmers Exchange, 103 N. Main, Sapulpa, Okla.; Forest Park Groc., 415 S. Adams, Sapulpa, Okla.; Herzer's Groc., 1501 E. Dewey, Box 991, Sapulpa, Okla.; Holt's Green Spray Kmt., 309 N. Mission, Sapulpa, Okla.; Jones

Groc., 421 W. Dewey, Sapulpa, Okla.; McCrackin Groc., 908 So. Main, Sapulpa, Okla.; Manning Groc., 606 E. Bryan, Sapulpa, Okla.; J. L. Patterson Groc., 705 E. Dewey St., [fol. 26] Sapulpa, Okla.; Mogab Foodland, #2 So. Independence, Sapulpa, Okla.; Frank Smith Groc., 420 West Dewey, Sapulpa, Okla.; H. E. Stroup Groc., 1601 So. Main, Sapulpa, Okla.; White Groc., 615 N. Mission, Sapulpa, Okla.; J. F. Brown & Son, 225 W. Main St., Sayre, Okla.; Hartman's Groc., 705 N. 7th, Sayre, Okla.; Howard's Grocery, 305 West Main, Sayre, Okla.; Puckett's Food, Sayre, Okla.; Puckett's 4th St. Groc., 1014 N 4, Sayre, Okla.; Steve's Grocery, 901 W. Main, Sayre, Okla.; United Cash Stores, Sayre, Okla.; A. G. Food Center, 410 North First, Seminole, Okla.; Cagle's Grocery, 922 N. Jefferson, Seminole, Okla.; Carlton Groc., 618 North 1st, Seminole, Okla.; Chesser Gro. & Mkt., Rt. 3, Seminole, Okla.; Clayton's Groc. & Mkt., 800 E. Bdwy, Seminole, Okla.; Doolittle Gro., Rt. 1, Seminole, Okla.; Glen's Groc., 317 E. Broadway, Seminole, Okla.; Sam Dalby, Green Spray Groc., Seminole, Okla.; Harmon Groc., 800 E. Bdwy, Seminole, Okla.; Mable Jackson Groc., Rt. 3, Seminole, Okla.; Jimmie's Food Mkt., 127 2nd St., Seminole, Okla.; Kelly Grocery, Rt. 3, Seminole, Okla.; M & P Stores, Strothers & Shawnee Hiwy, Seminole, Okla.; R. H. Oliver, Box 721, Seminole, Okla.; W. N. Parker, Rt. 4, Seminole, Okla.; Reed's Grocery, 547 W. Strothers, Seminole, Okla.; Square Deal Groc., Box 1213, Seminole, Okla.; Sunray Groc., 326 E. Evans, Seminole, Okla.; Sunshine Grocery, 405 W. Broadway, Seminole, Okla.; United Market, 117 N. 1st St., Seminole, Okla.; E. A. Whitbeck, 300 North 1st St., Seminole, Okla.; Blue Front Groc., 657 North Bdwy., Shawnee, Okla.; D. N. Brown's Gro. & Mkt., 834 Kickapoo, Shawnee, Okla.; Frank L. Carding, Sanitary Gro. & Mkt., 406 E. Main, Shawnee, Okla.; Curley's Grocery, 337 S. Penn., Shawnee, Okla.; L. G. Griggs, 1330 E. Main, Shawnee, Okla.; Hanifan Grocery, 131 So. Minn., Shawnee, Okla.; Merl Hardesty Groc., Rt. 3, Shawnee, Okla.; Don Hardesty Superette, 1703 N. Kickapoo, Shawnee, Okla.; Harry's Grocery, 520 W. Highland, Shawnee, Okla.; Frank Harris Groc., 524 So. Beard, Shawnee, Okla.; Rex Hopkins Grocery, 109 W. Bentley, Shawnee, Okla.; M & P Stores, Inc., Aldridge Hotel, Shawnee, Okla.; R. J. Markham Groc., 911 W. Benedict,

Shawnee, Okla.; Marlow Grocery, 229 Kickapoo, Shawnee, Okla.; Wayne Marshall Grocery, 503 S. Beard, Shawnee, Okla.; Martin's Grocery, 500 So. Louisa, Shawnee, Okla.; W. H. Merritt, Jr., 301 North Tucker, Shawnee, Okla.; Model Gro. & Mkt., 661 N. Kickapoo, Shawnee, Okla.; Pat Proffer, 1302 E. Main, Shawnee, Okla.; Theo Pruitt, 425 E. Main, Shawnee, Okla.; The Public Market, 326 E. Highland, Shawnee, Okla.; A. T. Reaves Gro. & Mkt., Shawnee, Okla.; J. W. Roberson, 830 E. Main, Shawnee, Okla.; Smith Grocery, Rt. 3, Shawnee, Okla.; Stewart's Grocery, 2230 N. Kickapoo, Shawnee, Okla.; Stop & Shop Groc., 1000 W. Benedict, Shawnee, Okla.; Stubbs Groc., 2100 N. Harrison, Shawnee, Okla.; Sunshine Groc. & Mkt., 701 N. Beard, Shawnee, Okla.; Leslie Thurman, 1502 N. Beard St., Shawnee, Okla.; Welch Groc., 1130 N. Beard, Shawnee, Okla.; [fol. 27] Paul Williams Grocery, 613 N. Pottinger, Shawnee, Okla.; Willson's Cash Gro., 811 N. Kickapoo, Shawnee, Okla.; Andy's Groc., 507 W. Elm, Stillwater, Okla.; College Grocery, 519 West 3rd St., Stillwater, Okla.; Cypert's Gro. & Sta., Rt. 2, Stillwater, Okla.; Jack Dougherty Grocery, 502 Elm St., Stillwater, Okla.; Hemphill Groc. & Sta., 1316 East 6th St., Stillwater, Okla.; Roy A. Hesser Groc., 824 E. 6th Ave., Stillwater, Okla.; Paul King Groc., 1207 So. Main, Stillwater, Okla.; M & W Food Store, Stillwater, Okla.; Marvin's Food Mkt., 802 Husband, Stillwater, Okla.; Powell's Food Mkt., 301 Walnut, Stillwater, Okla.; Stillwater Fruit Mkt., 816 W. 6th, Stillwater, Okla.; W & W Food Mkt. #3, 1018 W. 8th, Stillwater, Okla.; Weatherly Groc. & Mkt., 1116 Main St., Stillwater, Okla.; Hokus-Pokus Groc., 820 W. 12th, Sulphur, Okla.; Howe's Groc., 119 W. Muskogee, Sulphur, Okla.; L & R Groc., 1200 W. Bdwy., Sulphur, Okla.; Morgan's Groc., 1010 W. 2nd, Sulphur, Okla.; Russell Brown Grocery, 309 E. Tahlequah, Sulphur, Okla.; C. J. Gilmore Groc., Box 95, Wagoner, Okla.; Grover Jennings & Son Gro., 221 S. Main, Wagoner, Okla.; Hinds Merc. Co., Wagoner, Okla.; Holland's Food Store, 214 E. Cherokee, Wagoner, Okla.; Westside Food Mkt., 410 W. Cherokee, Wagoner, Okla.; Ballard Groc., Wewoka, Okla.; T. G. Hedley, Box 1380, Wewoka, Okla.; M & P Grocery, 210 N. Wewoka, Wewoka, Okla.; Posey's Gro. & Mkt., Wewoka, Okla.; W. L. Scott Gro., 315 S. Wewoka, Wewoka,

Okla.; Sharp Gro. & Mkt., Rt. 2, Box 373, Wewoka, Okla.; Speegle Grocery, 321 W. 3rd, Wewoka, Okla.; Adams Food Store, 812 Texas Ave., Woodward, Okla.; Carroll's Courts, 1st St. Main Ave., Woodward, Okla.; P. D. Duncan Groc., 714 8th St., Woodward, Okla.; W. A. Fuller, Martinson's Groc., Woodward, Okla.; McCaslin Bros., 618 Main St., Woodward, Okla.; Open Air Market, 1110 Main St., Woodward, Okla.; Orie's Gro. & Mkt., 516 Oak St., Woodward, Okla.; Phillips Gro. & Mkt., 1321 Main St., Woodward, Okla.; City Gro. & Mkt., E. Main, P.O. Box 435, Wynnewood, Okla.; Jennings & Sons Gro., Wynnewood, Okla.; Rex Holmes, Box 396, Wynnewood, Okla.; McAllister Gro., Box 495, Wynnewood, Okla.; Nelson Gro. & Station, Rt. 3, Wynnewood, Okla.; Bass Merc. Co., Youkon, Okla.; R. E. Cox, Youkon, Okla.; Marvin Dunn, Dunn Gro. & Mkt., 401 Main St., Youkon, Okla.; Gill Groc., Youkon, Okla.; E. W. Keefner, Youkon, Okla.; T. G. Bassett, Afton, Okla.; Arthur H. Cox, Cox Food Mkt., Box 423, Afton, Okla.; Denzil Gro. & Locker, Beaver, Okla.; Hodges Food Store, Box 95, Beaver, Okla.; E. J. Booth, Box 461, Boise City, Okla.; Coly's Groc., Box 101, Boise City, Okla.; Locke Groc., Box 867, Boise City, Okla.; Johnson's Groc., P.O. Box. 231, Bowlegs, Okla.; Burton's Groc. & Mkt., Box 131, Broken Bow, Okla.; Gilbreath's Groc. & Ser., Box 81, Broken Bow, Okla.; L. J. Hammer Gro., Broken Bow, Okla.; James [fol. 28] Spottswood, Broken Bow, Okla.; S. J. Chronister Gro., Cameron, Okla.; C. B. Carrico, Chelsea, Okla.; Fred Massey, Box 236, Chelsea, Okla.; H. L. Setser, Setser Mkt., Fairland, Okla.; B & G Groc., Box 186, Goodwell, Okla.; John M. Elliott, Griggs, Okla.; H. O. Graham, Graham Bros., Inc., Box 551, Grove, Okla.; Hurst Gro. & Mkt., Grove, Okla.; Claycomb Gro. & Mkt., 411 W. 10th, Guymon, Okla.; Modern Food Mkt., 1209 North Main, Guymon, Okla.; Henry Moore Gro., Heavener, Okla.; Henry Ryburn Groc., 120 East Ave., C., Heavener, Okla.; Johnston Groc. & Sta., Hodgens, Okla.; Sommer Grocery, Hodgen, Okla.; Burdge Groc., Box 643, Hooker, Okla.; L. W. Woolbright Gro., Howe, Okla.; Keys Merc. Co., Box 221, Keyes, Okla.; Livingston Locker, Box 336, Keyes, Okla.; S. O. Dehart Gen. Mdse, LeFlore, Okla.; Hugh Kennedy, LeFlore, Okla.; Bretz Grocery, McCurtain, Okla.; Vaiet Davault, Marble City,

Okla.; B. L. Lynch Gro., Muldrow, Okla.; Mabray's Grocery, Muldrow, Okla.; Clayton Gro. & Mkt., Box 93, Panama, Okla.; Whiteaker Bros., Panama, Okla.; Camp's Food Mkt., Box 462, Poteau, Okla.; Midway Market, Rt. 1, Poteau, Okla.; Poteau Grocery, Poteau, Okla.; Cannon Gro., P.O. Box 102, Red Oak, Okal.; R. C. Cole Gro., Gen. Del., Red Oak, Okla.; Prock's Groc., Red Oak, Okla.; S. H. Stalcup, Box 97, Red Oak, Okla.; Stockton's IGA, Box 98, Red Oak, Okla.; Shelton Super Mkt., Box 487, Sallisaw, Okla.; T & H Groc., Sallisaw, Okla.; C. C. Gamble Gen. Mdse., Spiro, Okla.; Juanita Markgraf, Saveway Grocery, 1035 N. "C", Stillwell, Okla.; Ogdens Cash Store, Box 83, Stilwell, Okla.; Leland J. Daniel, Box 254, Texhoma, Okla.; Grocerteria, Box 686, Texhoma, Okla.; Fred Lyle, Box 187, Texhoma, Okla.; Brockman's Store, Vian, Okla.; H. V. Waldroop & Son, Box 54, Watts, Okla.; Kinnison Store, Welch, Okla.; Wagner's General Store, 3rd at Commercial, Box 97, Welch, Okla.; Gray Bros., Welling, Okla.; Neil Akin & Co., IGA, Westfille, Okla.; Anderson Mercantile, Elbert Sheffield, Westville, Okla.; Mutt Meeds Groc., Wister, Okla.; Lewis W. Campbell, Campbell Grocery, Box 103, Wyandotte, Okla.; Lee Circle, Circle Food Marts, Arkansas City, Kansas; H. A. Stoner, 5 Points Groc., Garden City, Kans.; Jefferies Groc., Box 613, Commerce, Okla.; Odneal Grocery, 301 So. Walnut, P.O. Box 613, Commerce, Okla.; Minson's Mkt., Commerce, Okla.; C. W. Seacat Groc., 312 Commerce St., P.O. Box 655, Commerce, Okla.; Star Cash Gro. & Mkt., Bx 537, Commerce, Okla.; Alvie Jones Gro., Idabel, Okla.; Davis Groc. & Mkt., 103 So. Central, Idabel, Okla.; Dudley Goolsby, 100 South Central, Idabel, Okla.; R. H. North Grocery, Idabel, Okla.; Palace Food Store, Idabel, Okla.; Westmoreland Groc., 910 S.E. Quincy, Idebel, Okla.; J. W. Woodrum Groc., 901 S. Central, Idabel, Okla.; Zeno Young Groc., Idabel, Okla.; C. E. Brandon's Groc., 516 Third Ave., N.W., Miami, Okla.; Cameron Groc., 829 7th Ave., NW, Miami, Okla.; Farrier's Market, 138 N. Main, Miami, Okla.; [fol. 29] Green Co., 916 H. St., NW, Miami, Okla.; Bob Hill Gro., 811 3rd St., NE, Miami, Okla.; Moonwink Shopping Center, 1001 9th & J. St., NW, Miami, Okla.; North West Gro., 703 NW 2nd St., Miami, Okla.; J. B. Notts Gro., 604 S. Main, Miami, Okla.; Stokes Warehouse Mkt., 301 S. Main,

Miami, Okla.; Earl Bill's Gro., 117 N. Muskogee, Tahlequah, Okla.; Garner Gro., 501 N. Muskogee, Tahlequah, Okla.; Justus Groc. & Mkt., Tahlequah, Okla.; Carter's Super Market, 120 W. Illinois, Vinita, Okla.; Eddie's Groc., N. Wilson, Vinita, Okla.; Henry's Grocery, 431 S. Wilson, Vinita, Okla.; Lloyd's Gro., 401 E. Illinois, Vinita, Okla.; North Side Gro., 600 N. Wilson, Vinita, Okla.; Pearce General Store, Rt. 5, Vinita, Okla.; Riverside Gro., Vinita, Okla.; Wade's Grocery, 602 W. Canadian, Vinita, Okla.; A. H. Ray Store, Box 8, Adair, Okla.; Meek's Grocery, Albert, Okla.; City Gro. & Mkt., Box 97, Alex, Okla.; O. B. Whitley, Alfalfa, Okla.; Hardwick's IGA Gro., Box 34, Allen, Okla.; Paskey Gro., Allen, Okla.; Peay's Gro. & Mkt., Box 66, Allen, Okla.; Faubian Grocery, Mrs. C. H. Faubian, Box 286, Alluwe, Okla.; Ed's Mart, 720 Normal, Alva, Okla.; Paul Weibner Groc., Alva, Okla.; Hastings Groc., Amber, Okla.; C. E. Holston, Box D, Ames, Okla.; Morks Groc., Ames, Okla.; Gardner Groc., 312 W. Main, Antlers, Okla.; S & S Grocery, Box 415, Antlers, Okla.; Woods Bros., Antlers, Okla.; Neals Gro. & Mkt., Box 523, Apache, Okla.; Moarty Gro., Box 9, Apache, Okla.; S. J. Schartzer Groc., 113 W. Evans, Box 444, Apache, Okla.; C. M. Warner & Co., Apache, Okla.; Cypret Gen. Mdse, Arcadia, Okla.; E. L. Buckles, Arnett, Okla.; Fred Killbrew, Arnett, Okla.; Fred Green Gro., Box 704, Asher, Okla.; Pettigrew Gro., Asher, Okla.; Homer Blaker's Grocery, Court & Main Sts., Atoka, Okla.; Bob McCary's Gro. & Mkt., 101 S. Penn, Atoka, Okla.; Wood Bros., Atoka, Okla.; Phillips Groc., Gen. Del., Avant, Okla.; Dixon Gro. & Mkt., Box 17, Bache, Okla.; Godfrey & Farmer, Bakersburg, Okla.; Black's Cottage Gro., Box 26, Barnsdall, Okla.; Hills Quality Foods, Box 634, Barnsdall, Okla.; Harvey's Food Store, Box #435, Beggs, Okla.; Herman's Gro., Bessie, Okla.; August Reuber Groc., Bessie, Okla.; Otis Peck's Groc., 104 E. Main, Bethany, Okla.; Billings Market, Billings, Okla.; Crane Gro. & Mkt., Box 48, Billings, Oklahoma; Quality Food Store, Box 254, Billings, Okla.; Doc's Packing House Mkt., Box 164, Bixby, Okla.; Riteway Food Store, Blanchard, Okla.; Wynn Gro., Blanchard, Okla.; H. B. Brown Gro., Blue, Okla.; T. T. Houston Gro., Box 201, Bokchito, Okla.; C. H. Neal, Bokchito, Okla.; Joe T. Riddle, Bokchito, Okla.; Robinson Gro., Bokchito,

Okla.; Anderson Gro. & Mkt., Boswell, Okla.; Barker's Gro. & Mkt., Box 34, Boswell, Okla.; Henry Duncan, Boswell, Okla.; B. E. Pitts, Box 188, Boswell, Okla.; R. Carver's Grocery, Buffalo, Okla.; Thompson's Food Store, Buffalo, [fol. 30] Okla.; Frey's Gro. & Mkt., Box 53, Burlington, Okla.; Marshall Grocery, Box 26, Burns Flat, Okla.; Kimball Grocery, Bushyhead, Okla.; Marton's Gro., Butler, Okla.; W. C. Simpson, Butler, Okla.; Stockton Gro. & Mkt., Butler, Okla.; Nu-Way Mkt., Box 35, Byron, Okla.; Brenton Groc., Cache, Okla.; Ken's Grocery, Cache, Okla.; Meadows Grocery, Box 36, Caddo, Okla.; Calera Trading Co., Box 175, Calera, Okla.; E. C. Harris Gro., P.O. Box 9, Calera, Okla.; Mary's Grocery, Calumet, Okla.; Moberly's Groc., Box 314, Calumet, Okla.; H. S. Wilson, Calumet, Okla.; Curtis Groc., Canton, Okla.; Ernie's IGA Store, Canton, Okla.; R. E. Herod, Canton, Okla.; Hopes Corner Groc., Box 233, Canton, Okla.; Kilhoffer & Walters, Box 66, Canute, Okla.; Mitchell & Barker, Carmen, Okla.; Greenfield Merc., Box B, Carney, Okla.; Sadler Gro. & Mkt., Rt. 1, Carney, Okla.; Peck's Food Mkt., Box 157, Cement, Okla.; Bay Grocery, Box 14, Chandler, Okla.; Boggs Merc. Co., Chandler, Okla.; Hart Gro. & Mkt., 1101 Iowa, Chandler, Okla.; Hill Crest Groc., 224 E. 3rd, Box 55, Chandler, Okla.; Roberts Grocery, P.O. Box 117, Chattanooga, Okla.; Kroeker Groc., Fran, Kroeker, Box 15, Chouteau, Okla.; Vandver & Blackwell, Box 197, Checotah, Okla.; Cook's Grocery, 105 S. Grand, Cherokee, Okla.; Branstetter's Store, Chester, Okla.; Jarvis & Eaton Gro. & Mkt., Box 466, Cheyenne, Okla.; Krows Gro. & Mkt., Box 206, Cheyenne, Okla.; Leedy Gro., RFD Roll, Cheyenne, Okla.; McDaniel's Groc., Box 413, Cheyenne, Okla.; Bill Stewart Gro., Choctaw, Okla.; R. A. Gry's Gro. & Stal, Rt. 1, Box 29, Choctaw, Okla.; Chandler Gro. & Mkt., Chouteau, Okla.; Hammons Gro., 530 E. 9th St., Claremore, Okla.; W. L. Kern, Box 67, Clemscott, Okla.; H. O. Wilson Gro. & Dgs., Box 19, Cleo Springs, Okla.; Central Food Mkt., Cleveland, Okla.; Cooks Grocery, Cleveland, Okla.; Don C. Cox Grocery, 513 W. Deleware, Cleveland, Okla.; J. M. Grady, Cleveland, Okla.; Jones Grocery, Cloud Chief, Okla.; Price Grocery, Cloud Chief, Okla.; Avanzini Gro. & Mkt., 101 S. Broadway, Coalgate,

Okla.; Hudson Bros., Coalgate, Okla.; Frank J. Yalch, Rt. 1, Coalgate, Okla.; Schrantz Gen. Mdse, Gen. Del., Cogar, Okla.; C. E. Bacon, Box 1007, Colbert, Okla.; Hannan Gro., Colbert, Okla.; Guenther Groc., Box A, Collinsville, Okla.; Kinder's IGA Gro., Box 285, Comanche, Okla.; Talley Gro. & Mkt., Rt. 2, Comanche, Okla.; U-Save Food Store, Box 372, Comanche, Okla.; Byrd's Groc., Connerville, Okla.; Crawford's Groc., Box 126, Copan, Okla.; Crane Groc., Cordell, Okla.; United Cash Stores, Cordell, Okla.; Welden's Food Store, 110 E. First St., Cordell, Okla.; Heinrichs & Son, Corn, Okla.; A. H. Ratslaff, Corn, Okla.; Gossett's General Mdse., County Line, Okla.; Ed's Groc. & Mkt., Main St., Box 186, Covington, Okla.; Rogers Food Store, Covington, Okla.; Evans Food Mkt., Box 97, Coyle, Okla.; Sanitary Market, Box 303, Coyle, Okla.; Boyd Groc., [fol. 31] Box 6, Crawford, Okla.; Crescent Gro. & Mkt., Box 186, Crescent, Okla.; Larry Food Mkt., Box 26, Crescent, Okla.; Sunshine Market, Box 127, Crescent, Okla.; Roy W. Devero, Box 207, Cromwell, Okla.; E. Bederniss, Custer City, Okla.; Hill's, Box 164, Custer, Okla.; Custer City Farmers Coop., Custer City, Okla.; Bud's Grocery, Cyril, Okla.; B. F. Medlin, 1131 E. Main, Cordell, Okla.; Puckett's Food Store, 116 So. Market, Cordell, Okla.; Kaser's Food Store, Cyril, Okla.; Nichols Grocery, Davenport, Okla.; Jenkins Gro. & D.G., Box 126, Davenport, Okla.; Johnson Grocery, Davis, Okla.; Russell Bros. Groc., 102 W. Main, Davis, Okla.; Tucker Cash Food Mkt., P.O. Box 394, Davis, Okla.; West Grocery, 302 Main St., Davis, Okla.; Landers Bros., Deleware, Okla.; Little Grocery, Box 427, Delaware, Okla.; Garlands Groc., Box 278, Depew, Okla.; L. A. Petty Gro. & Mkt., Box 38, Depew, Okla.; Wm. Calhoun, Calhoun's Groc., 508 E. 8th St., Dewey, Okla.; Carter Diamond Food Store, Dewey, Okla.; M. E. Lemmons, Dewey, Okla.; R. H. Ensey's Sta. & Gro., Rt. 1, Dill City, Okla.; Tom's Groc., Box 124, Dill City, Okla.; Dover Cash Store, Dover, Okla.; Mauk's Store, Dover, Okla.; Art Robinson Grocery, Box 226, Dover, Okla.; Christian & Wampler IGA, Box 7, Duke, Okla.; Lacy Groc., Durham, Okla.; Smith's Merc., Box 48, Durham, Okla.; K. H. Hendon Groc., Eabletown, Okla.; C & L Merc. Co., Eakly, Okla.; Mrs. Susie

Sims Grocery, Eakley, Okla.; Castell IGA Groc., P.O. Box 205, Earlsboro, Okla.; J & J Gro. & Mkt., Box 164, Earlsboro, Okla.; C. J. Sikes, Rt. 1, Earlsboro, Okla.; Cotton Grocery, Eldorado, Okla.; Farley Gro. & Mkt., Main St., Eldorado, Okla.; Neel Grocery, Elgin, Okla.; Turnbull & Turnbull, Route 1, Elgin, Okla.; Hatton Grocery, Elmer, Okla.; Cash Drive In Gro., Box 63, Elmore City, Okla.; Mullen's Gro. & Mkt., Elmore City, Okla.; 4th St. Grocery, Box 13, Erick, Okla.; H. E. McCarty Gro., 323 W. Broadway, Box 774, Erick, Okla.; McMinn Cash Gro. & Mkt., Box 233, Erick, Okla.; Pucketts Food Store, Erick, Okla.; Knight's Food Store, Eufaula, Okla.; Palace Gro., Fairfax, Okla.; W. L. Oldham, Billville Station, Fairmont, Okla.; Eichmon IGA Food Store, Fairview, Okla.; Uncle Walt's Gro., 111 So. 9th, Fairview, Okla.; Wesel's Grocery, Fairview, Okla.; LaCamp's Gro. & Mkt., Box 87, Fargo, Okla.; L. R. Davis Produce & Groc., Box 73, Fargo, Okla.; Baker's Groc., P.O. Box 53, Faxon, Okla.; Faxon Gro. & Mkt., P.O. Box 114, Faxon, Okla.; J. J. Burnes Gen. Mdse, Box 5, Finley, Okla.; Hill's Super Mkt., Box 336, Fletcher, Okla.; Adams Grocery, Forgan, Okla.; Ratliff Gro. & Mkt., P.O. Box 143, Fort Cobb, Okla.; E. B. Weidenmaier Gro., Box 167, Fort Cobb, Okla.; Lile Grocery, Box 15, Freedom, Okla.; May's Grocery, Ft. Towson, Okla.; C. C. Dugger, Foss, Okla.; E. A. Boathright, Boathright's Gen. Store, Fort Gibson, Okla.; Cresswell Grocery, Box 147, Gage, Okla.; McMannis Store, Gage, Okla.; Denton's, Main St., Garber, Okla.; S & S [fol. 32] Grocery, Box 347, Garber, Okla.; Allison's Groc. #5, Geary, Okla.; Carricks Groc., 602 S. Canadian, Geary, Okla.; H & M Groc., Box 55, Geary, Okla.; Nora Walls Groc., RR #3, Geary, Okla.; O. K. Ringelman, Geary, Okla.; City Market, Box 43, Davenport, Okla.; Gore Merc., Box 126, Gore Okla.; J. C. Luke, Gotebo, Okla.; W. J. Thissen, Box 269, Gotebo, Okla.; Cox & Anderson, Gould, Okla.; C. T. Hawkins Groc., Rt. 1, Gould, Okla.; Don Drake Grocery, Gracemont, Okla.; Givens & Son Groc., Box 434, Gracemont, Okla.; Cothrum & Reser Food Mkt., Box 366, Granite, Okla.; Lake Creek Store, Rt. 1, Granite, Okla.; Autry's IGA, Greenfield, Okla.; Carl Long Groc., Grimes, Okla.; C & R Groc., Box 67, Haileyville, Okla.;

Volturo Groc., & Mkt., Box 276, Haileyville, Okla.; City IGA Groc., Hammon, Okla.; Coles Groc. & Mkt., P.O. Box 357, Hammon, Okla.; Fairview Groc. & Sta., Box 234, Hammon, Okla.; A. L. Flint Grocery, Hammon, Okla.; Paul A. Bartlett, Hardesty, Okla.; Proctor's IGA, Harrah, Okla.; Lawrence & Paul Seikel, Harrah, Okla.; Carletti's, Hartshorne, Okla.; Hill's Groc. & Mkt., 700 West Lehigh, Hartshorne, Okla.; Messina Kash & Karry, Hartshorne, Okla.; Miller's Grocery, Hartshorne, Okla.; Frankie Fisher's Gro., Haskell, Okla.; Curtis Jackson Grocery, Rt. 1, Haskell, Okla.; A. C. Bland Groc., Hastings, Okla.; W. W. Stepp, Headrick, Okla.; Bentley's Groc., 4th & Texas, Healdton, Okla.; Gauntt & Worsham Grocery, Healdton, Okla.; Bailey Food Store, Box 104, Hennessey, Okla.; Lacy Store, Rt. 1, Box 90, Hennessey, Okla.; John Nichols IGA, Hennessey, Okla.; C. A. Hampton, Hinton Cash Gro., Hinton, Okla.; Market Basket, Box 6, Hinton, Okla.; Modern Food Market, P.O. Box 376, Hinton, Okla.; Allman Gro. & Mkt., 107 E. Main, Hominy, Okla.; Haltom's Gen. Store, Box 215, Hopeton, Okla.; Hi Way Market, Hi Way 99, Hominy, Okla.; Hominy Grocery, Hominy, Okla.; J. H. Bright, 409 West Jackson, Hugo, Okla.; Corner Grocery, 415 E. Jackson, Hugo, Okla.; Handy Food Store, 1009 W. Dalton, Hugo, Okla.; Kay's Food Store, 116 W. Jackson, Hugo, Okla.; Shankle Merc., Hulbert, Okla.; Squyres Merc., Box 1197, Hulbert, Okla.; Lewis Gro. & Mkt., Hunter, Okla.; Wilson Gro. & Feed, Hunter, Okla.; Lassiter Gro. & Mkt., Hydro, Okla.; Alltizer & Sons, Indiahoma, Okla.; Brenton's Groc., Indiahoma, Okla.; Gibson Groc., Box 596, Jenks, Okla.; City Market, Jet, Okla.; Frey's Grocery, Box 57, Jet, Okla.; Crandall Gro. & Mkt., Box #47, Jones, Okla.; A. B. Wittens Gro., Rt. 1, Jones, Okla.; Evans Store, Keefton, Okla.; B & B Store, Kendrick, Okla.; Bollenbachs Gro., 220 N. Main, Kingfisher, Okla.; Roy Campbell, Box 165, Kingfisher, Okla.; Howard's IGA Food Market, 303 N. Main, Kingfisher, Okla.; Springer Market, North Main St., Kingfisher, Okla.; Economy Groc. & Mkt., 103 S. Broadway, Konawa, Okla.; A. G. Hamrick Gro., Box 426, Konawa, Okla.; Piggly [fol. 33] Wiggly Groc., Konawa, Okla.; F. M. Streetman, Konawa, Okla.; Dorsey's Store, Box 164, Langley, Okla.;

Laverne Gro. & Mkt., Laverne, Okla.; Witch's Locker & Groc., Box 173, Laverne, Okla.; Nosler Gro., Rt. 1, Laverne, Okla.; Roy Orr's Gro. & Sta., Box 395, Lebanon, Okla.; J. D. Cates, Leedy, Okla.; Northrup Bro., Lenapha, Okla.; Hardwick's Gen. Store, Box 57, Lexington, Okla.; Eli Elkins Grocery, Rt. 2, Lindsay, Okla.; Dner's IGA, 2 North Main, Lindsay, Okla.; M & W Super Market, 18 West Choctaw, Lindsay, Okla.; F. D. Stephens Groc., Lindsay, Okla.; Culver General Store, Box 1296, Loco, Okla.; L. G. Risner, Box 134, Lone Grove, Okla.; Moggs Bro., Lookeba, Okla.; Becker's Place, Longdale, Okla.; C. W. Castle's Grocery, P.O. Box 296, Lonewolf, Okla.; Loveland Grocery, 20 S. Main, Loveland, Okla.; J. T. Armstrong, Luther, Okla.; Morgan & Hayes, Luther, Okla.; Bird's Store, McLoud, Okla.; Seikel's Dept. Store, McLoud, Okla.; Jack & Stan Food Store, Box 405, Madill, Okla.; Palace Gro. & Mkt., Box 486, Madill, Okla.; S & S Gro., 311 E. Main, Madill, Okla.; C & M. Food Store; P.O. Box 311, Marietta, Okla.; Jefferson Food Market, Box 612, Marland, Okla.; M & H Grocery, 904 N. Broadway, Marlow, Okla.; J. A. Hodnett & Son, Box 366, Marlow, Okla.; J. M. Reynolds & Son, Marlow, Okla.; Byron Wright, Marlow, Okla.; Martin Grocery, Marshall, Okla.; W & W Grocery, Marshall, Okla.; Martha Mercantile, Box 108, Martha, Okla.; Bohannon Grocery, Box 207, Maud, Okla.; City Groc. & Mkt., P.O. Box 266, Maud, Okla.; Copeland Grocery, 109 E. Main, Maud, Okla.; Odanial Groc., Box 268, Maud, Okla.; J & J Groc., Maysville, Okla.; Jackson Groc., Box 162, Maysville, Okla.; Ratzlaff IGA Super Market, Box 237, Maysville, Okla.; George Williamson Groc., Maysville, Okla.; Floyd Reed, Box 174, Medford, Okla.; Westside Groc. & Sta., Box 44, Medicine Park, Okla.; City Gro. & Mkt., Box 114, Meeker, Okla.; Clarke & Hilton, Meeker, Okla.; Park's Locker Plant, Meeker, Okla.; Meers Gro., Meers, Okla.; W. E. Breeden, Milburn, Okla.; Jackson Groc., Milfay, Okla.; Albert Smith Gen. Mdse, Moore, Okla.; Moore Food Market, Box 488, Moore, Okla.; Dunbar Super Gro. & Mkt., Box 139, Mooreland, Okla.; Henderson & Son, Box 196, Mooreland, Okla.; C. A. Lamar, Morris, Okla.; Pulley's Gro. & Locker, Box 794, Morrison, Okla.; George's Super Mkt., P.O. Box 116, Mountain Park, Okla.;

Weidenmaier's IGA, Box 765, Mountain View, Okla.; Fines M. Robertson, P.O. Box 487, Mt. View, Okla.; Farmers Store, Mulhall, Okla.; Coles Grocery, Gen. Del., Mustang, Okla.; Medford Gro., Mustang, Okla.; Cash & Carry Gro., Mutual, Okla.; Junction Service Supply, Mutual, Okla.; Shaw Grocery, R.F.D. Hawley, Nash, Okla.; C. H. Wilson, Nash, Okla.; Smith Gro. & Mkt., Box 24, New Castle, Okla.; Dale's Foodland, Newkirk, Okla.; Farmers Co-operative Store, 107 E. 7tn, Newkirk, Okla.; Mel Leavitt Gro., 214 S. Cedar, Newkirk, Okla.; Ralph Leighty, Ralph's Cash [fol. 34] Gro. & Mkt., 108 N. Main, Newkirk, Okla.; Harlan Grocery, Box 151, Noble, Okla.; Thomas Food Store, Box 177, Noble, Okla.; Rumsey's Grocery, Box 108, Nicoma Park, Okla.; Landers Bros., Nowata, Okla.; Weiss Food Store, Nowata, Okla.; Harts Grocery, Box 248, Oakwood, Okla.; Pope's Gro. & Mkt., Main & C St., Oilton, Okla.; Tippin Groc., Box 617, Oilton, Okla.; Normangrummer, Okarche Cash Store, Okarche, Okla.; Eischen's Gro. & Mkt., Okarche, Okla.; Paul Lodes, Okarche, Okla.; Louis Weidenmaier, IGA Store, Okeen, Okla.; M & M Grocery, Okeen, Okla.; Phillips Grocery, Oscar, Okla.; Finch Feed & Grocery, Box 80, Owasso, Okla.; Delmar's Grocery, Gen. Del., Perkins, Okla.; Myers Gro. & Station, Rt. 2, Perkins, Okla.; Nuway Groc. & Mkt., Box 157, Perkins, Okla.; Delbert's Grocery, Ringling, Okla.; W. H. Sears, Box 93, Romona, Okla.; Grim's Grocery, Box 34, Red Rock, Okla.; Martin's Gro. & Station, Rt. 2, Perkins, Okla.; Wilkers Gen. Store, Pershing, Okla.; W. C. Fowler, Box 363, Pharoah, Okla.; Piedmont Merc. Co., Piedmont, Okla.; Buy-Rite Food Market, Box 266, Pond Creek, Okla.; Faragher Gro. & Mkt., Pond Creek, Okla.; Ross Gro. & Sta., Gen. Del., Pontotoc, Okla.; E. Garrison Cash Gro., Pooleville, Okla.; A. E. Kananek, Prague, Okla.; L. M. Moore Super Mkt., Box 3, Prague, Okla.; V. B. Pierce Gro., Box 101, Prague, Okla.; Gabel's IGA, 810 East Center, Pryor, Okla.; Carter's Store 3 Mill, Pryor, Okla.; Jobe's Drive-In Mkt., So. Mill & 5th Sts., Pryor, Okla.; O. K. Gro. & Mkt., 15 S. Adair, Pryor, Okla.; Bethel Cobb Gro., 114 N. 5th, Purcell, Okla.; M & E Food Mkt., 325 S. 5th St., Purcell, Okla.; McElderry Grocery, 134 W. Main, Purcell, Okla.; Buddy Morris, Morris Grocery, Gen. Del.,

Ringling, Okla.; L. B. Reid Merc. Co., Quinton, Okla.; Carter's Store, P.O. Box 115, Ramona, Okla.; Osage Grocery, Ralston, Okla.; Park Store, Box 187, Ringling, Okla.; Bill's Grocery, Box 93, Rocky, Okla.; Puckett's Grocery, Rocky, Okla.; G. A. Brown Grocery, Box 113, Roff, Okla.; G. C. Castelberry Gro., Box 64, Roff, Okla.; Nash Dept. Store, Box 128, Roosevelt, Okla.; Armstrong Grocery, Ryan, Okla.; Ryan Cash Grocery, Ryan, Okla.; Clyde Allen, Route 1, Salina, Okla.; C O D Gro. & Mkt., Box 92, Sasakawa, Okla.; Streetman's Food Mkt., Sasakaw, Okla.; S. J. Chronister, Second & Washington, Sand Springs, Okla.; Mendenhall Groc. & Mkt., Box 14, Seiling, Okla.; Huffman's Groc., Box 133, Selman, Okla.; United Cash Stores, Sentinel, Okla.; Voyle's Food Store, Box 287, Sentinel, Okla.; Bestway Food Stores, Box 163, Shattuck, Okla.; Stouts Grocery, Shattuck, Okla.; Cut Rate Grocery, Box 216, Shidler, Okla.; J. H. Daniels Gro., Box 513, Shidler, Okla.; North Side Grocery, Shidler, Okla.; Public Market, B. F. Harryman, Box 104, Shidler, Okla.; Lorenz Gro. & Mkt., Skiatook, Okla.; Leonard Sherrer, Snow, Okla.; Toma Bros. Groc., Box 245, Snyder, Okla.; United [fol. 35] Gro. Co., 611 E. Street, Snyder, Okla.; Williams & Wynn Gro., Box 97, Snyder, Okla.; Southard Merc. Co., Southard, Okla.; Shook's IGA Store, South Coffeyville, Okla.; Green Grocery, Box 128, Spencer, Okla.; McBride Gro., Box 8, Spencer, Okla.; M. C. Sampley, Springer, Okla.; Fowler & Adwan, St. Louis, Okla.; Pennington Grocery, Box 276, Stibler, Okla.; Shelton's Super Mkt., Stigler, Okla.; Stigler Flour & Feed, Box 513, Stigler, Okla.; Reed's Grocery, Box 336, Stratford, Okla.; Farmer's Exchange, Box 296, Stratford, Okla.; "Meadows", 216 W. Main, Stroud, Okla.; Stroud Produce, Stroud, Okla.; Rex Stone Groc., Stroud, Okla.; Louis D. Brooks, Box 267, Stuart, Okla.; Nowlin's Grocery, Summerfield, Okla.; E. T. Wilson Co., Sweetwater, Okla.; C. A. Bearce Gen. Store, Box 254, Talala, Okla.; Lang Sales & Service, Box 415, Talihina, Okla.; Ideal Food Mkt., Box 90, Taloga, Okla.; Varner's Grocery, Tatums, Okla.; Haley's Gro., Rt. 2, Tecumseh, Okla.; Karr's, Box 106, Tecumseh, Okla.; Winters Grocery, Rt. 2, Tecumseh, Okla.; Sparks IGA Store, Box 278, Temple, Okla.; Smith & Mundy Grocery,

Terral, Okla.; Taylor's Cut Rate Gro., 100 Broadway, Thomas, Okla.; Give & Take Gro. & Mkt., Box 107, Tipton, Okla.; Walker Bros. Gro., Box 637, Tipton, Okla.; Tryon Trading Co., Box 7, Tryon, Okla.; Dorsett's Food Mkt., 105 N. Main, Tonkawa, Okla.; Smith & White Gro. & Mkt., Tishomingo, Okla.; Barker's Grocery, 315 N. 9th, Tonkawa, Okla.; Edna Hamilton, Gen. Mdse., Bx 728, Turley, Okla.; Mrs. R. J. Bowers, Tuttle, Okla.; Caldwell Locker Service, Tuttle, Okla.; Tuttle Traders, Tuttle, Okla.; L. D. Rozell, Box 26, Uncas, Okla.; Albert Gatz Gro., Box 577, Union City, Okla.; Kyle Wright Grocery, Box D, Union City, Okla.; E. J. Crabtree Gro., Valliant, Okla.; C. E. Martin, Gen. Mdse., Box 47, Velma, Okla.; Mrs. Louise Brice, Verden, Okla.; Verden Food Market, Box 316, Verden, Okla.; Best Way Store, Box 305, Vici, Okla.; Clara Grays Grocery, Vinson, Okla.; Myers & Myers, Box 79, Vinson, Okla.; L. L. Land, Wade, Okla.; Calhoun Grocery, Walters, Okla.; Cut Rate Grocery, 113 S. Broadway, Walters, Okla.; Roberts Grocery, 101 E. Missouri, Walters, Okla.; Sharpe Grocery, 222 East Nevada, Walters, Okla.; Thompson Gro. & Mkt., 126 S. Broadway, Walters, Okla.; Townsend Gro. & Stal, Rt. 5, Walters, Okla.; D. D. Johnson Grocery, Box 62, Wanette, Okla.; Taylor's Gen. Mdse., P.O. Box 266, Wann, Okla.; W. H. McCurry Gro. & Mkt., Box 1366, Wapanucka, Okla.; Owen Gro., Box 1476, Wapanucka, Okla.; Wrateshaw Gro., Wapanucka, Okla.; Finklea Bros. & Son, Warner, Okla.; Goldsby Gro. & Mkt., Rt. 1, Washington, Okla.; H. P. Price Gen. Mdse., Washington, Okla.; Griffin Gro., Watonga, Okla.; Wren's Food Store, Box 254, Waukomis, Okla.; Frank Elkin's Market, Waurika, Okla.; J. M. Lewis Grocery, Waurika, Okla.; Sims Grocery, Waurika, Okla.; Chandler Food Mkt., Box 225, Wayne, [fol. 36] Okla.; E. J. Luper Gro., Box 72, Wayne, Okla.; Coury's Dept. Store, Waynoka, Okla.; Eaton Gro. & Mkt., Weatherford, Okla.; F. D. Shults, Weatherford, Okla.; Sure Way Grocery, 109 N. Broadway, Weatherford, Okla.; Thacker Bros., Weatherford, Okla.; Clapps Gro., Webb City, Okla.; Hays Store, Webbers Falls, Okla.; Taylor Allen Groc., Rt. 1, Weleetka, Okla.; J. B. Grocery, Weleetka, Okla.; M & M Grocery, Main St., Weleetka, Okla.; Piepke Gro. & Market, Box 113, Wellston, Okla.; Morgan & Hayes,

Box 156, Wellston, Okla.; Farmers Exchange, Wetumka, Okla.; Proctor & Morris Groc., Box 393, Wetumka, Okla.; Johnson's Grocery, Wheatland, Okla.; Oliver M. Haynes, White Oak, Okla.; Long's Cash Grocery, Box 348, Wilburton, Okla.; Wilburton Super Market, Wilburton, Okla.; Smith's Gro. & Mkt., Box 376, Willow, Okla.; S. P. Brimer, Jr., Brimer Grocery, Gen. Del., Wilson, Okla.; W. C. Finley, Box 463, Wilson, Okla.; J. T. Hyde Gro., Rt. 1, Wilson, Okla.; Robert Ward, Wirt, Okla.; W. F. King, Wolco, Okla.; Young's Grocery, North Carr, Wynnewood, Okla.; Shouldis Gro., 155 W. Broadway, Yale, Okla.; Watson Gro. & Market, Yale, Okla.; Compton Grocery, Yuba, Okla.; Studer Bros., Canadian, Texas: Mr. Louis Bryan, Bryan Food Store, Perryton, Texas.

[fol. 37]

EXHIBIT "B" TO PETITION

Articles of merchandise, referred to in paragraph numbered "4", alleged to have been advertised for sale, offered for sale, and sold by the defendant, at retail, at less than cost to the retailer, as defined in the "Unfair Sales Act", and in violation of the terms, restrictions, and provisions contained in said Act:

September 15th, 1954,

Oklahoma City, Oklahoma:

BABY FOOD, Gerber's, 3 Cans	$ .25
PINEAPPLE, Sliced Libby's, No. 2 Can	.27
CANE SUGAR, 10 lb. Bag	.97
CRISCO Shortening, 3 lb. Can	.90
OXYDOL Powdered Detergent, Giant Package	.69
TIDE Powdered Detergent, Giant Package	.69
FAB Powdered Detergent, Giant Package	.69
CORN, Del Monte Cream Style, No. 303 Can	.14
MILNOT, Tall Can, 3 Cans	.27
FLOUR, Gold Medal, 10 lb. Package	.48
SALT, Morton's, 2 Boxes	.19
TEA, Lipton's Orange Pekoe, 1/4 lb. Package	.28
TUNA, Chicken O' Sea, No. 1/2 Can	.30
KLEENEX Tissues, Box of 200	.12
CRANBERRY SAUCE, Ocean Spray, No. 303 Can	.19

September 17th, 1954,

Oklahoma City, Oklahoma:

Crisco Shortening, 3 lb. Can	$ .92
Milnot, Tall, 3 Cans	.28
Flour, Gold Medal, 5 lb. Package	.49

Enid, Oklahoma:

Bakerite Shortening, 3 lb. Can	.69
Jello, 1 package	.05
Sugar, Granulated, 10 lb. Package	.89
Biscuits, Pillsbury's, 1 Can	.05
Biscuits, Puffin, 1 Can	.05

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September 20th, 1954,

Tulsa, Oklahoma:

Kleenex Tissues, Box of 200	$ .12
Flour, Gold Medal, 5 lb. Package	.48
Tea, Lipton's, 1/4 lb. Package	.28
Crisco Shortening, 3 lb. Can	.90
Tide Powdered Detergent, Giant Package	.69
Oxydol Powdered Detergent, Giant Package	.69
Fab Powdered Detergent, Giant Package	.69
Milnot, Tall, 1 Can	.09
Cane Sugar, 10 lb. Package	.97

September 21st, 1954,

Enid, Oklahoma:

Tide, Powdered Detergent, Giant Package	$ .65
Milnot, Tall, 1 Can	.06
Bakerite Shortening, 3 lb. Can	.69
Jello, 1 Package	.04
Granulated Sugar, 10 lb. Package	.89
Miracle Whip, Salad Dressing, Quart Jar	.45
Biscuits, Pillsbury's, 1 Can	.04
Biscuits, Puffin, 1 can	.04
Catsup, Del Monte, 14 oz. Bottle	.14
Tissue, Northern, 1 Roll	.04

Crisco Shortening, 3 lb. Can	.75
Mellorine Frozen Dessert, 1/2 Gallon	.34
Coffee, Folger's, 1 lb. Can	.97

Norman, Oklahoma:

Cane Sugar, 10 lb. Package	.89
Coffee, Maryland Club, 1 lb. Can	.98

September 22nd, 1954,

Oklahoma City, Oklahoma:

Baby Food, Gerber's, 3 Cans	$ .23
Pineapple, Libby's Sliced, No. 2 Can	.27
Cane Sugar, 10 lb. Package	.97
Crisco Shortening, 3 lb. Can	.90
Tide Powdered Detergent, Giant Package	.69

[fol. 39]

Corn, Del Monte Cream Style, No. 303 Can	.14
Milnot, Tall, 3 Cans	.27
Flour, Gold Medal, 5 lb. Package	.48
Tea, Lipton's Orange Pekoe, 1/4 lb. Package	.28
Kleenex Tissues, Box of 200	.12

September 24th, 1954,

Oklahoma City, Oklahoma:

Cane Sugar, 10 lb. Package	$1.00
Crisco Shortening, 3 lb. Can	.92
Tide Powdered Detergent, Giant Package	.71
Milnot, Tall, 3 Cans	.28
Flour, Gold Medal, 5 lb. Package	.49
Baby Food, Gerber's, 3 Cans	.24

Enid, Oklahoma:

Tide Powdered Detergent, Giant Package	.65
Milnot, Tall, 1 Can	.06
Bakerite Shortening, 3 lb. Can	.69
Jello, 1 Package	.04
Granulated Sugar, 10 lb. Package	.89
Miracle Whip Salad Dressing, Quart Jar	.45
Biscuits, Pillsbury's, 1 Can	.04
Biscuits, Puffin, 1 Can	.04

Tissue, Northern, 1 Roll	.04
Mellorine Frozen Dessert, 1/2 Gallon	.34

September 29th, 1954,

Oklahoma City, Oklahoma:

Pineapple, Libby's Sliced, No. 2 Can	$ .27
Cane Sugar, 10 lb. Package	.95
Crisco Shortening, 3 lb. Can	.90
Oxydol Powdered Detergent, Giant Package	.69
Tide Powdered Detergent, Giant Package	.69
Fab Powdered Detergent, Giant Package	.69
Milnot, Tall, 3 Cans	.27
Flour, Gold Medal, 5 lb. Package	.48
Tea, Lipton's Orange Pekoe, 1/4 lb. Package	.20
Kleenex Tissues, Box of 200	.12

[fol. 40]
October 1st, 1954,

Oklahoma City, Oklahoma:

Baby Food, Gerber's, 3 Cans	$ .23
Cane Sugar, 10 lb. Package	.95
Crisco Shortening, 3 lb. Can	.90
Tide Powdered Detergent, Giant Package	.69
Fab Powdered Detergent, Giant Package	.69
Oxydol Powdered Detergent, Giant Package	.69
Milnot, Tall, 3 Cans	.27
Flour, Gold Medal, 5 lb. Package	.48
Kleenex Tissues, Box of 200	.12

Enid, Oklahoma:

Crisco Shortening, 3 lb. Can	.73
Granulated Sugar, 10 lb. Package	.87
Tissue, Northern, 3 Rolls	.10
Cake Mix, Betty Crocker Marble	.27

October 4th, 1954,

Oklahoma City, Oklahoma:

Baby Food, Gerber's, 3 Cans	$ .24
Cane Sugar, 10 lb. Package	.97

Crisco Shortening, 3 lb. Can	.92
Tide Powdered Detergent, Giant Package	.71
Oxydol Powdered Detergent, Giant Package	.71
Fab Powdered Detergent, Giant Package	.71
Pineapple, Libby's Sliced, No. 2 Can	.28

October 5th, 1954,

Norman, Oklahoma:

Cane Sugar, 10 lb. Package	$ .88
Coffee, Maryland Club, 1 lb. Package	.95
Biscuits, All Brands, 3 Cans	.23

[fol. 41]
October 6th, 1954,

Oklahoma City, Oklahoma:

Baby Food, Gerber's, 3 Cans	$ .23
Pineapple, Libby's Sliced, No. 2 Can	.27
Cane Sugar, 10 lb. Package	.95
Crisco Shortening, 3 lb. Can	.90
Oxydol Powdered Detergent, Giant Package	.69
Fab Powdered Detergent, Giant Package	.69
Tide Powdered Detergent, Giant Package	.69
Corn, Del Monte Cream Style, No. 303 Can	.14
Milnot, Tall, 3 Cans	.27
Flour, Gold Medal, 5 lb. Package	.48
Kleenex Tissues, Box of 200	.12

Enid, Oklahoma:

Crisco Shortening, 3 lb. Can	.69
Tide Powdered Detergent, Giant Package	.63
Milnot, Tall, 2 Cans	.09
Coffee, Folger's, 1 lb. Can	.93
Bakerite Shortening, 3 lb. Can	.65
Jello, 2 Packages	.95
Granulated Sugar, 10 lb. Package	.87
Miracle Whip Salad Dressing, Quart Jar	.45
Biscuits, Pillsbury's, 2 Cans	.05
Biscuits, Puffin, 2 Cans	.05
Tissue, Northern, 2 Rolls	.05
Milk, Pet, 1 Can	.12

Sugar, Powdered or Brown, 1 Package	.10
Orangeade, Hi C, 46 oz. Can	.23
Mellorine Frozen Dessert, 1/2 Gallon	.32

October 7th, 1954,

Norman, Oklahoma:

Pineapple, Libby's Crushed, No. 2 Can	$ .25
Biscuits, All Brands, 3 Cans	.23
Cane Sugar, 10 lb. Package	.88

[fol. 42]

October 8th, 1954,

Oklahoma City, Oklahoma:

Baby Food, Gerger's, 3 Cans	$ .23
Pineapple, Libby's Sliced, No. 2 Can	.27
Oxydol Powdered Detergent, Giant Package	.69
Tide Powdered Detergent, Giant Package	.69
Fab Powdered Detergent, Giant Package	.69
Cheer, Powdered Detergent, Giant Package	.69
Corn, Del Monte Cream Style, No. 303 Can	.14
Flour, Gold Medal, 5 lb. Package	.48
Kleenex Tissues, Box of 200	.12
Cane Sugar, 10 lb. Package	.95
Milnot, Tall, 3 Cans	.27
Crisco Shortening, 3 lb. Can	.90

Tulsa, Oklahoma:

Baby Food, Gerber's, 2 Cans	.23
Oxydol Powdered Detergent, Giant Package	.69
Tide Powdered Detergent, Giant Package	.69
Fab Powdered Detergent, Giant Package	.69
Milnot, Tall, 1 Can	.09
Crisco Shortening, 3 lb. Can	.89

Enid, Oklahoma:

Bakerite Shortening, 3 lb. Can	.65
Granulated Sugar, 10 lb. Package	.85
Miracle Whip Salad Dressing, Quart Jar	.45
Milk, Pet, Tall, 1 Can	.12

Sugar, Powdered or Brown, 1 Package	.10
Coffee, Folger's, 1 lb. Can	.93
Orangeade, Hi C, 46 oz. Can	.23

October 13th, 1954,

Oklahoma City, Oklahoma:

Pineapple, Libby's Sliced, No. 2 Can	$ .27
Cane Sugar, 10 lb. Package	.95
Crisco Shortening, 3 lb. Can	.86
Tide Powdered Detergent, Giant Package	.69
Fab, Powdered Detergent, Giant Package	.69
Oxydol Powdered Detergent, Giant Package	.69

[fol. 43]

Milnot, Tall, 3 Cans	.27
Flour, Gold Medal, 5 lb. Package	.48

October 14th, 1954,

Norman, Oklahoma:

Cane Sugar, 10 lb. Package	$ .85

October 15th, 1954,

Oklahoma City, Oklahoma:

Baby Food, Gerber's, 3 Cans	$ .22
Pineapple, Libby's Sliced, No. 2 Can	.27
Cane Sugar, 10 lb. Package	.95
Crisco Shortening, 3 lb. Can	.86
Tide Powdered Detergent, Giant Package	.68
Cheer Powdered Detergent, Giant Package	.68
Fab Powdered Detergent, Giant Package	.68
Oxydol Powdered Detergent, Giant Package	.68
Milnot, Tall, 3 Cans	.27
Flour, Gold Medal, 5 lb. Package	.48
Miracle Whip Salad Dressing, Quart Jar	.49

Enid, Oklahoma:

Crisco Shortening, 3 lb. Can	.67
Tide Powdered Detergent, Giant Package	.59
Granulated Sugar, 10 lb. Package	.85

Milk, Pet, Tall, 2 Cans	.23
Sugar, Powdered or Brown, 1 Package	.10

Shawnee, Oklahoma:

Cane Sugar, 10 lb. Package	.95

October 19th, 1954,

Norman, Oklahoma:

Coffee, Maryland Club, 1 lb. Can	$ .95
Cane Sugar, 10 lb. Package	.80
Jello, 3 Packages	.19
Crisco Shortening, 3 lb. Can	.79
Tide Powdered Detergent, Giant Package	.65
Cheer Powdered Detergent, Giant Package	.65

[fol. 44]

Dr. Pepper, Carton of 6	.19
Seven Up, Carton of 6	.19
Coca-Cola, Carton of 6	.19

October 20th, 1954,

Oklahoma City, Oklahoma:

Baby Food, Gerber's, 3 Cans	$ .23
Pineapple, Libby's Sliced, No. 2 Can	.27
Cane Sugar, 10 lb. Package	.95
Crisco, 3 lb. Can	.86
Oxydol Powdered Detergent, Giant Package	.69
Tide Powdered Detergent, Giant Package	.69
Fab Powdered Detergent, Giant Package	.69
Milnot, Tall, 3 Cans	.27
Flour, Gold Medal, 5 lb. Package	.48
Kleenex Tissues, 2 Boxes of 200	.25
Miracle Whip Salad Dressing, Wuart Jar	.50

Enid, Oklahoma:

Crisco Shortening, 3 lb. Can	.69
Tide Powdered Detergent, Giant Package	.59
Miracle Whip Salad Dressing, Quart Jar	.43
Bakerite Shortening, 3 lb. Can	.63
Granulated Sugar, 10 lb. Package	.85
Mellorine Frozen Dessert, 1/2 Gallon	.32

Milk, Pet, Tall, 2 Cans	.23
Milk, Carnation, Tall, 2 Cans	.23
Orangeade, Hi C, 46 oz. Can	.23
Sugar, Powdered or Brown, 1 Package	.10
Coffee, Folger's, 1 lb. Can	.92

October 21st, 1954,

Norman, Oklahoma:

Cane Sugar, 10 lb. Package	$ .80
Jello, 3 Packages	.19
Crisco Shortening, 3 lb. Can	.79
Dr. Pepper, Carton of 6	.19
Seven Up, Carton of 6	.19
Coca-Cola, Carton of 6	.19
Soup, Campbell's Tomato, 2 Cans	.21
Milnot, Tall, 3 Cans	.27

[fol. 45]

Cheer Powdered Detergent, Giant Package	.65
Tide Powdered Detergent, Giant Package	.65

October 22nd, 1954,

Oklahoma City, Oklahoma:

Baby Food, Gerber's, 3 Cans	$ .22
Pineapple, Libby's Sliced, No. 2 Can	.27
Cane Sugar, 10 lb. Package	.92
Crisco Shortening, 3 lb. Can	.84
Tide Powdered Detergent, Giant Package	.67
Fab Powdered Detergent, Giant Package	.67
Milnot, Tall, 3 Cans	.26
Flour, Gold Medal, 5 lb. Package	.48
Kleenex Tissues, Box of 200, 2 Boxes	.23
Miracle Whip Salad Dressing, Quart Jar	.48

Tulsa, Oklahoma:

Crisco Shortening, 3 lb. Can	$ .83
Milnot, Tall, 3 Cans	.25
Flour, Gold Medal, 5 lb. Package	.47
Spry Shortening, 3 lb. Can	.83

[File endorsement omitted]

[fol. 50]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY, STATE OF OKLAHOMA

[Title omitted]

TEMPORARY RESTRAINING ORDER—October 25, 1954

THE STATE OF OKLAHOMA TO:

Safeway Stores, Inc.,
a foreign corporation; and

Its agents, servants, clerks, and employees within the State of Oklahoma:

This matter coming on for hearing before the undersigned Judge of the District Court within and for Oklahoma County, State of Oklahoma, upon the verified petition of the plaintiff filed herein;

And it appearing to the Court, from said petition, that [fol. 51] said plaintiff and the members of plaintiff Association, for whose benefit this cause is prosecuted, will suffer irreparable damage and injury, and fair competition will be impaired and prevented, and public welfare injured, and trade unreasonably restrained, unless the defendant is forthwith and without notice restrained, and that the plaintiff, upon the facts alleged in said petition, is entitled to the relief prayed for:

IT IS HEREBY ORDERED, ADJUDGED and DECREED by the Court that the said defendant, Safeway Stores, Inc., a foreign corporation, operating general retail grocery stores within the State of Oklahoma, and its agents, servants, clerks, employees, and all persons acting by or under its authority, be, and they are each hereby enjoined and restrained from advertising for sale, offering for sale, and selling, at retail, any items of merchandise handled by said defendant corporation in or through its establishments within the State of Oklahoma, and particularly the items set forth in plaintiff's "Exhibit B" attached to the petition herein, and incorporated herein by reference, at prices which are less than cost as defined in the "Unfair Sales

Act" set out in Oklahoma Statutes Annotated, Title 15, Sections 598.1 and including 598.11, until this cause is heard on the application for temporary or permanent injunction, or until the further order of the Court herein.

[fol. 52] It is further ORDERED by the Court that the application of the plaintiff for a temporary injunction be, and the same is hereby set for hearing before the Judge to whom this case is regularly assigned, at the District Courtroom of said Judge, in the County Court House Building, in the City of Oklahoma City, State of Oklahoma, on the 1st day of December, 1954, at 9:00 A.M., and that notice thereof be given to the said defendant at least 10 days prior to the date of said hearing.

HEREOF FAIL NOT UNDER PENALTY OF LAW.

Dated this 25 day of October, 1954.

GLEN O. MORRIS
Presiding District Judge.

[fol. 61]
IN THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA

[Title omitted]

ANSWER OF DEFENDANT, SAFEWAY STORES, INCORPORATED—
Filed March 11, 1955

Defendant, Safeway Stores, Incorporated, a corporation, with leave of Court first obtained, for its answer to plaintiff's petition, alleges and states:

1. That the defendant denies, both generally and specifically, each and every, all and singular, the allegations and averments in plaintiff's petition contained, except those that are hereinafter specifically admitted.

2. Defendant admits the corporate existence of plaintiff and defendant, as alleged in plaintiff's petition, and admits [fol. 62] that during the times mentioned therein defendant was authorized to and was conducting a retail grocery business within the State of Oklahoma.

3. Defendant denies that it advertised for sale, offered for sale or sold 10# packages of Gold Medal Flour at 48¢ on September 15, 1954, and denies that it advertised for sale, offered for sale, or sold ¼# packages of Lipton's Orange Pekoe Tea for 20¢ on September 29, 1954, but admits that it advertised for sale, offered for sale and sold all other items set forth in Exhibit "B" to plaintiff's petition upon the dates and for the prices therein set forth. Defendant denies that the advertisement, offer for sale or sale of such articles was in violation of the Oklahoma Unfair Sales Act and alleges that the prices of said items were made by defendant, in good faith, to meet the prices of a competitor or competitors of defendant who were, on the dates complained of, selling the same articles or products of comparable quality at such prices.

4. Defendant denies all of the allegations contained in numerical paragraphs 5, 6 and 7 of plaintiff's petition.

5. Further answering and for further defense, defendant alleges that the plaintiff, Oklahoma Retail Grocers Association, Inc., is not engaged in the sale of food products or other merchandise at retail, and does not conduct a [fol. 63] competitive business, but is an organization organized by and existing for the benefit of its members within the State of Oklahoma, for the principal purpose of maintaining minimum prices or price levels prescribed by the Oklahoma Unfair Sales Act, of foods and other articles or products sold by its members and others engaged in the retail grocery business within the State of Oklahoma. That the persons and corporations whose names are shown on Exhibit "A" to plaintiff's petition are the real parties in interest and the following named persons and corporations are admitted to be members of plaintiff association:

Miskovsky Foods, Inc., a corporation

Kenneth R. Watters, a sole trader, dba
Lakeside Super Market #2

Leroy K. Watters, a sole trader, dba
Lakeside Super Market No. 1

Buford C. Greenhaw, a sole trader, dba
Greenhaw's Market No. 2

Vernon H. Scott and Harlan R. Scott, partners, dba Scott's Food Mart

Scott's Food Mart #2, Inc., an Oklahoma corporation

Stockton's Super Market, Inc., a corporation,

Louie J. Speed, an individual, dba Speed's Food Market No. 3,

Robert E. Potter, dba Potter's Thrif-T-Wise

Louie J. Speed, Inc., dba Speed's Food Market #1

[fol. 64] E. P. Spencer, a sole trader, dba Spencer's Super Market

A. M. Childress, a sole trader, dba Al's Thrif-T-Wise

Louis W. Whittaker, dba Whittaker's Food Store No. 5.

That during the period from July 15, 1954, to and including September 15, 1954, the above named members of plaintiff association were advertising, offering for sale, and selling in Oklahoma City, Oklahoma, in direct competition with defendant, the food products and other merchandise at the prices hereinafter set forth. That, in addition to the items of merchandise sold, said members of plaintiff association sold or distributed to their customers trading stamps, coupons, redeemable cash register receipts or other evidences of credit, without making or collecting any additional charge therefor, and said evidences of credit had a cost or value of not less than 2.8% of the selling prices of said articles on every day except Wednesday, and a cost or value of not less than 5.6% of the selling prices on Wednesday of each week. That said evidences of credit are redeemable in premiums or in merchandise having a cost or value, as aforesaid, and the sale or distribution of

said evidences of credit, as aforesaid, resulted in a reduction in the sales prices charged by said members of plaintiff association to the extent of the cost or value thereof. That the above named members of plaintiff association [fol. 65] have, at all times, asserted that their prices for said items were lawful prices and defendant did, on the 15th day of September, 1954, reduce its prices for said articles in the Oklahoma City area, in good faith, to meet the competitive prices of said members of plaintiff Association. That the following is a list of said articles, showing the prices charged therefor by defendant upon the previous day; the advertised prices of the above named members of plaintiff association on September 15, 1954; the net prices of said items sold by members of the association, and the prices charged by defendant in the Oklahoma City area on September 15, 1954, in order to meet the competitive prices of the above named members of plaintiff association.

Item	Size	Safeway Retail Price Sept 14 1954	Advertised Price Members Plaintiff Association Sept 14 1954	Sale Price Members Plaintiff Association	Sale Price Safeway Sept 15 1954
Baby Food Gerber	4½oz	3/.25	3/.25	3/.2360	3/.23
Pineapple Libby, sliced	#2	.29	.29	.2737	.27
Sugar, Cane	10#	1.03	1.03	.9723	.97
Crisco	3#	.95	.95	.8968	.90
[fol. 66]					
Oxydol Detergent	Gt	.73	.73	.6891	.69
Tide Detergent	Gt	.73	.73	.6891	.69
Fab Detergent	Gt	.73	.73	.6891	.69
Corn Del Monte C.S	#303	.15	.15	.1416	.14
Milnot	Tall	3/.29	3/.29	3/.2737	3/.27

Item	Size	Safeway Retail Price Sept 14 1954	Advertised Price Members Plaintiff Association Sept 14 1954	Sale Price Members Plaintiff Association	Sale Price Safeway Sept 15 1954
Flour Gold Medal	5#	.50	.50	.4720	.48
Salt Morton's	26oz	2/.20	2/.50	2/.1888	2/.19
Tea Liptons	1/4#	.30	.30	.2832	.28
Tuna Chicken O'Sea	#1/2	.32	.32	.3020	.30
Kleenex	200's	.13	.13	.227	.12
Cranberry Sauce O S	#303	.20	.20	.1888	.19

6. That thereafter, and on September 17, September 22, September 24, September 29, October 1, October 4, October 6, October 8, October 13, October 15, October 20 and October 22, 1954, defendant's prices of the items set forth in [fol. 67] plaintiff's Exhibit "B" in the Oklahoma City area were adjusted and made in the same manner as the prices charged by the defendant on September 15, 1954, in good faith, to meet the prices of the above named members of plaintiff association, and others who were then and are now competitors of defendant.

7. Defendant further alleges that if the Court finds that defendant was not justified in meeting the prices made by its competitors because the same were not lawful prices and that the members of plaintiff association above named sold the articles set forth in paragraphs 5, and 6 hereof, upon the dates and for the amounts therein set forth and distributed therewith, at no additional charge, the evidences of credit herein alleged, then defendant alleges that said advertising, offering for sale and sales were at less than the minimum mark-on required by the Oklahoma Unfair Sales Act, with the intent and purpose of inducing the purchase

of other merchandise or unfairly diverting trade from the defendant, or otherwise injuring the defendant, and the result of such advertising, offering for sale, or sales, tended to deceive purchasers or prospective purchasers, or to substantially lessen competition or tend to restrain trade, and by reason thereof, plaintiff does not come into this Court with clean hands, and neither it nor its members are entitled to any relief as to the matters complained of in plaintiff's petition.

[fol. 68] 8. Defendant further alleges that the advertising, offering for sale and sale of the articles set forth in paragraphs 5 and 6 herein for the prices and upon the dates therein set forth, and the giving or distributing of trading stamps, coupons, redeemable cash register receipts or other evidences of credit, without making any additional charge therefor, constitutes the advertising, offering for sale or sale of two or more items at a combined price in violation of Title 15 O. S. Section 598.2, sub-paragraphs (a) and (b); that by reason thereof, plaintiff does not come into this Court with clean hands, and neither it nor its members are entitled to any relief as to the matters complained of in plaintiff's petition.

9. That the denial by the Court of the right of defendant to meet the competitive prices of the aforementioned members of plaintiff association, and others, would result in an unconstitutional application as to this defendant of the Oklahoma Unfair Sales Act, and would deny this defendant the equal protection of the laws under the Fourteenth Amendment of the Constitution of the United States, and would amount to the taking of its property without due process of law in violation of Article II, Section 7, of the Constitution of Oklahoma, and the Fifth Amendment to the Constitution of the United States.

[fol. 69] Wherefore, defendant prays that plaintiff take nothing by reason of its petition herein, and that defendant recover its costs herein expended, and have such other and further relief as it may be entitled to in equity.

Embry, Crowe, Tolbert, Boxley & Johnson

By V. P. Crowe
V. P. Crowe

CERTIFICATE OF SERVICE (omitted in printing).

LEAVE granted to file the within answer this 11th day of March, 1955.

CLARENCE MILLS
Acting PRESIDING JUDGE

[File endorsement omitted]

[fol. 81]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY,
STATE OF OKLAHOMA

[Title omitted]

MOTION TO MODIFY TEMPORARY RESTRAINING ORDER—
Filed March 17, 1955

Defendant above named shows the Court that the temporary restraining order heretofore issued herein is broader in scope than the allegations of plaintiff's petition and is likewise broader in scope than the relief authorized under the Oklahoma Unfair Sales Act under which this action is brought, and that the same should be modified in the following particulars, to-wit:

1. That the restraint against selling merchandise "at prices which are less than cost as defined in the Unfair [fol. 82] Sales Act set out in Oklahoma Statutes Annotated, Title 15, Sections 598.1 to and including 5981 . . ," should be modified so as to restrain only advertising, offering for sale and sales made with the intent, purpose and results which are required by Section 598.3, Title 15, Oklahoma Statutes Annotated, so as to permit this defendant to meet, in good faith, all prices of its competitors who are selling the same articles or products of comparable quality, in order that defendant may maintain its competitive position; and, in this connection, defendant shows the Court that under such Oklahoma Unfair Sales Act sales below cost as defined in such Act are not illegal unless accompanied by the intent and result required by said Act.

2. That said restraining order seeks to restrain defendant from the acts specified in the whole State of Oklahoma, and the allegations of plaintiff's petition are based solely upon alleged violations of said Unfair Sales Act by defendant at Oklahoma City, Tulsa, Enid, Norman and Shawnee, Oklahoma, only, and that in no event could said restraining order extend to any other location within the State of Oklahoma, and said restraining order should be modified to limit its application to the towns in which it is alleged defendant violated said Act.

3. That said temporary restraining order should be [fol. 83] limited only to specific violations charged in the petition, or like violations, and defendant may not be restrained generally from violating the provisions of the Act.

WHEREFORE, defendant moves the Court to modify the temporary restraining order heretofore issued herein in the particulars specified above.

V. P. CROWE
V. P. Crowe

EMBRY, CROWE, TOLBERT, BOXLEY & JOHNSON,
640 First National Building,
Oklahoma City, Oklahoma.
ATTORNEYS FOR DEFENDANT.

[File endorsement omitted]

[fol. 84]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY,
STATE OF OKLAHOMA

[Title omitted]

ORDER CONTINUING TEMPORARY RESTRAINING ORDER—
March 14, 1955

On this 14th day of March, 1955, there came on for hearing the motion for continuance filed herein by the plaintiff, and the plaintiff, Oklahoma Retail Grocers Association,

Inc., appearing by its counsel of record, and the defendant, Safeway Stores, Inc., appearing by its counsel of record;

And the Court, having heard the evidence introduced on behalf of the plaintiff and on behalf of the defendant, and the argument of counsel, and being fully advised in the premises, and on consideration thereof, finds:

That plaintiff's motion for continuance should be sustained.

That all motions, demurrers, and preliminary matters to be heard by the Court herein should be continued to the 11th day of July, 1955, at 10:00 A.M.

[fol. 85] That the temporary restraining order, entered by the Court herein on October 25th, 1954, and issued against the defendant, Safeway Stores, Inc., should be continued in full force and effect until the 11th day of July, 1955, or until otherwise ordered by the Court herein.

It Is Therefore Ordered, Adjudged and Decreed by the Court that the plaintiff's motion for continuance be, and the same is hereby sustained and allowed.

It is further Ordered by the Court that all motions, demurrers, and preliminary matters to be heard by the Court herein, be, and the same are hereby continued to the 11th day of July, 1955, at 10:00 A.M.

It is further Ordered by the Court that the temporary restraining order, entered by the Court herein on October 25th, 1954, and issued against the defendant, Safeway Stores, Inc., be, and the same is hereby continued in full force and effect until the 11th day of July, 1955, or until otherwise ordered by the Court herein:

To all of which, the defendant Excepts and Exceptions are allowed by the Court.

F. B. H. Spellman
District Judge.

[File endorsement omitted]

[fol. 86]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY,
STATE OF OKLAHOMA

[Title omitted]

MOTION TO MODIFY TEMPORARY RESTRAINING ORDER—
Filed April 1, 1955

The plaintiff, Oklahoma Retail Grocers Association, Inc., a corporation, in support of its motion to modify the temporary restraining order entered herein on the 25th day of October, 1954, show to the Court:

That the defendant, Safeway Stores, Inc., a foreign corporation, was, by said order of the Court, restrained and enjoined, in part, as follows:

> "IT IS HEREBY ORDERED, ADJUDGED and DECREED by the Court that the said defendant, Safeway Stores, Inc., a foreign corporation, operating general retail grocery [fol. 87] stores within the State of Oklahoma, and its agents, servants, clerks, employees, and all persons acting by or under its authority, be, and they are each hereby enjoined and restrained from advertising for sale, offering for sale, and selling, at retail, any items of merchandise handled by said defendant corporation in or through its establishments within the State of Oklahoma, . . . at prices which are less than cost as defined in the 'Unfair Sales Act' set out in Oklahoma Statutes Annotated, Title 15, Sections 598.1 to and including 598.11, until this cause is heard on the application for temporary or permanent injunction, or until the further order of the Court herein."

On the 23rd and 30th days of March, 1955, said defendant advertised for sale, offered for sale, and sold certain items of merchandise at the minimum prices prescribed by the Oklahoma Unfair Sales Act, in the Cities of Norman, Midwest City, Perry, Ponca City, and Oklahoma City, within the State of Oklahoma, and, in addition thereot, said defendant issued to its customers, who pur-

chased such minimum priced articles, two trading stamps designated as "cash saver coupons" with each 50¢ purchase of such minimum priced articles, the said trading stamps having a value to the customer of 1½¢ each, or a value to the customer of 6% of the sale price of such minimum priced articles, and the sales prices of such minimum priced articles, on said dates and at said places, were thereby reduced to the extent of the value of the double, or extra, trading stamps issued.

The said defendant has advertised that it will continue, [fol. 88] in the future, to issue its double trading stamps on Wednesday of each and every week.

The said minimum priced articles were advertised for sale, offered for sale, and sold by the defendant with the intent and purpose to unlawfully divert trade from members of plaintiff Association (who are competitors of defendant) doing business in said cities, or with the intent of inducing the purchase of other merchandise, or otherwise injuring said members of plaintiff Association, or impairing and preventing fair competition; and the result of such advertising for sale, offering for sale, and sales of said minimum priced articles tends, and in the future will tend, to deceive purchasers or prospective purchasers of defendant, or to substantially lessen competition, or to unreasonably restrain trade in the retail grocery business in said cities in the State of Oklahoma.

And, plaintiff alleges:

That such acts on the part of said defendant constitute violations of the Oklahoma Unfair Sales Act, and that the continuation of said acts by defendant in the future will cause plaintiff, and the members of plaintiff Association in said cities in Oklahoma, to suffer irreparable damage and injury, for which plaintiff and the members of plaintiff Association have no adequate remedy at law.

Plaintiff further shows to the Court:

[fol. 89] That its membership is made up of several hundred independent retail grocery merchants all over the State of Oklahoma.

That, in the five cities referred to above, plaintiff has 323 members; and that the number of members affected in each city is:

Oklahoma City and Midwest City Area:	284;
Norman:	15;
Perry:	7; and
Ponca City:	17.

That only 35 of the members of plaintiff Association in the cities affected issue single trading stamps (or similar evidences of value), with the sale of minimum priced merchandise, said trading stamps (or other evidences of value) having a value to the customer of 3%, or less, of the sale price of such minimum priced articles or merchandise; and, plaintiff is informed and believes and, upon such information and belief, alleges that, in the cities affected, none of its members is engaged in the practice of issuing double trading stamps (or other such evidences of value) with the sale of minimum priced merchandise.

That, prior to March 16th, 1955, only a very small number of plaintiff's members were engaged in the practice of issuing, once weekly, double trading stamps (or similar evidences of value) with a value to the customer of 6%, or less, of the sale price of such minimum priced merchandise; and that said practice was discontinued on [fol. 90] said 16th day of March, 1955, and prior to the 23rd day of March, 1955, when the defendant commenced the practice of issuing its double stamps to its customers, as aforesaid.

That defendant has, at all times since the filing of this suit, asserted that the practice of issuing double trading stamps, having a value to the customer of 5.6%, or more, of the sale price of minimum priced merchandise, was, and is, violative of the terms and provisions of the Oklahoma Unfair Sales Act; But, the said defendant has denied that it is violating the order entered by the Court on October 25th, 1954, in the following publicly uttered

words of one of its attorneys: ". . . because no order against us has mentioned the use of stamps."

Plaintiff further shows to the Court:

That the issuance by the defendant of its double trading stamps with minimum priced merchandise, in only five cities in Oklahoma, as aforesaid, is violative of the terms and provisions of Article IX, Section 45, of The Constitution of the State of Oklahoma, which provides as follows:

> "Until otherwise provided by law, no person, firm, association, or corporation engaged in the production, manufacture, distribution, or sale of any commodity of general use, shall, for the purpose of creating a monopoly, or destroying competition in trade, discriminate between different persons, associations, or corporations, or different sections, communities, or [fol. 91] cities of the State, by selling such commodity at a lower rate in one section, community, or city than in another, after making due allowance for the difference, if any, in the grade, quantity, or quality, and in the actual cost of transportation from the point of production or manufacture."

That the issuance by defendant of its double trading stamps with minimum priced merchandise, in only five cities in Oklahoma, as aforesaid, is violative of the terms and provisions of Oklahoma Statutes Annotated, Title 79, Sections 1 to 7 inclusive, Sections 21 to 37, inclusive, and Sections 81 to 87 inclusive, relating to combinations in restraint of trade and unfair discrimination or competition.

That the issuance by defendant of its double trading stamps with minimum priced merchandise, in only five cities in Oklahoma, as aforesaid, unreasonably and directly restrains interstate trade and commerce in food, and food produced, distributed, and sold in many states of the United States, and including Oklahoma, in violation of Section 1 of the Act of Congress of July 2nd, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies" (26 Stat. 209; 15

U.S.C. Sec. 1), as amended, commonly known as "The Sherman Act".

And, further in this connection, plaintiff shows to the Court:

That the defendant operates several hundred retail food [fol. 92] outlets in various parts of the United States, and that it has confined its discriminatory practice of issuing its double trading stamps, as aforesaid, to only the five cities in Oklahoma.

That the practice of issuing trading stamps in this Country has prevailed for more than fifty years, and that trading stamps are being issued by retail food stores, and other establishments, in various other parts of Oklahoma and in 45 states of the Union.

Plaintiff further states:

That the purpose and intent of defendant, in issuing its double trading stamps, as aforesaid, and in violation of the Oklahoma Unfair Sales Act, The Constitution of the State of Oklahoma, other revelant statutes of the State of Oklahoma, and The Sherman Act, as aforesaid, has been and is (in addition to the matters and things stated above) a part of a national scheme and conspiracy:

To directly, substantially, and unreasonably restrain a large part of the trade and commerce in food and food products among many of the cities of Oklahoma and of the states of the United States;

To injure and destroy thousands of independent retail food dealers in Oklahoma and throughout the United States;

To vest in the defendant dominance and control of the distribution of food and food products in Oklahoma and [fol. 93] many of the largest trade areas of the United States; and

To make it impossible for anyone not similarly integrated to enter into or remain in competition with the defendant.

WHEREFORE, plaintiff prays:

That the temporary restraining order heretofore entered herein by the Court be forthwith modified, amplified, and enlarged to restrain and enjoin said defendant corporation from issuing more than one of its trading stamps with each 50¢ purchase of any and all minimum priced merchandise in any of its retail outlets in Oklahoma;

That the defendant be forthwith restrained and enjoined from advertising the issuance of more than one of its trading stamps with each 50¢ purchase of any and all merchandise advertised for sale, offered for sale, or sold at cost to the retailer, as defined in the Oklahoma Unfair Sales Act;

That the defendant be forthwith restrained and enjoined from issuing in excess of one of its trading stamps with each 50¢ purchase of any and all merchandise advertised for sale, offered for sale, or sold by the defendant, when the price of such merchandise, after subtracting the value of such extra or double trading stamps, is below cost to the retailer in the Oklahoma Unfair Sales Act; and

That said temporary restraining order, as modified, amplified, and enlarged, be continued in full force and [fol. 94] effect until the 11th day of July, 1955, or until otherwise ordered by the Court.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC.,
a corporation,
Plaintiff

By: MISKOVSKY and MISKOVSKY

By: GEORGE MISKOVSKY
GEORGE MISKOVSKY
Attorneys for Plaintiff.

Duly sworn to by L. O. Bowman, jurat omitted in printing.

[fol. 95] [File endorsement omitted]

[fol. 96]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY, STATE OF OKLAHOMA

[Title omitted]

AMENDED TEMPORARY RESTRAINING ORDER—
Signed April 7, 1955

THE STATE OF OKLAHOMA TO:

Safeway Stores, Inc.,
a foreign corporation; and
Its agents, servants, clerks, and employees
within the State of Oklahoma:

The verified motion of the plaintiff, Oklahoma Retail Grocers Association, Inc., a corporation, to modify the temporary restraining order entered herein against the defendant, Safeway Stores, Inc., a foreign corporation, on the 25th day of October, 1954, coming on for hearing before the undersigned Judge, assigned to and acting within and for Oklahoma County, State of Oklahoma;

And the plaintiff appearing by its counsel of record, and the defendant appearing by its counsel of record;

And it appearing to the Court, from said verified motion of the plaintiff, and after having considered said motion [fol. 97] and after having heard the argument of counsel:

That said plaintiff Association, and its members, will suffer irreparable damage and injury, and fair competition will be impaired and prevented, and the public welfare injured, and trade unreasonably restrained, unless the defendant, its agents, servants, clerks, and employees within the State of Oklahoma are forthwith, and without further hearing or notice, restrained; and

That the plaintiff, upon the facts alleged in said verified motion, is entitled to the relief prayed for:

IT IS HEREBY ORDERED, ADJUDGED and DECREED by the Court that the said defendant, Safeway Stores, Inc., a foreign corporation, operating general retail grocery stores

within the State of Oklahoma, and its agents, servants, clerks, employees, and all persons acting by or under its authority, be, and they are each hereby enjoined and restrained from advertising for sale, offering for sale, and selling, at retail, any items of merchandise handled by said defendant corporation in or through its establishments within the State of Oklahoma, and particularly the items set forth in plaintiff's "Exhibit B" attached to the petition herein, and incorporated herein by reference, at prices which are less than cost to the retailer as defined in the "Unfair Sales Act" set out in Oklahoma Statutes Annotated, Title 15, Sections 598.1 to and including 598.11, until this cause is heard on the application for temporary [fol. 98] or permanent injunction, or until the further order of the Court herein.

It is further ORDERED, ADJUDGED and DECREED by the Court that the said defendant, Safeway Stores, Inc., a foreign corporation, operating general retail grocery stores within the State of Oklahoma, and its agents, servants, clerks, employees, and all persons acting by or under its authority, be, and they are each hereby enjoined and restrained from giving or issuing, in any of its retail outlets in the State of Oklahoma, in excess of one of its trading stamps, designated as "Cashsaver Coupons", having a value of 1½¢ each, or any similar thing of the same value, with each 50¢ purchase of any and all merchandise advertised for sale, offered for sale, or sold by defendant at cost to the retailer as defined in the Oklahoma "Unfair Sales Act"; and

It is further ORDERED, ADJUDGED and DECREED by the Court that the said defendant, Safeway Stores, Inc., a foreign corporation, operating general retail grocery stores within the State of Oklahoma, and its agents, servants, clerks, employees, and all persons acting by or under its authority, be, and they are each hereby enjoined and restrained from advertising the giving or issuance, in any of its retail outlets in the State of Oklahoma, of more than one of its trading stamps, designated as "Cashsaver Cou-
[fol. 99] pons", having a value of 1½¢ each, or any similar thing of the same value, with each 50¢ purchase of any

and all merchandise advertised for sale, offered for sale, or sold by defendant at cost to the retailer as defined in the Oklahoma "Unfair Sales Act"; and

It is further ORDERED, ADJUDGED and DECREED by the Court that the said defendant, Safeway Stores, Inc., a foreign corporation, operating general retail grocery stores within the State of Oklahoma, and its agents, servants, clerks, employees, and all persons acting by or under its authority, be, and they are each hereby enjoined and restrained from giving or issuing, in any of its retail outlets in the State of Oklahoma, in excess of one of its trading stamps, designated as "Cashsaver Coupons", having a value of 1½¢ each, or any similar thing of the same value, with the purchase of any and all merchandise advertised for sale, offered for sale, or sold by the defendant, when the price of any such item of merchandise, after subtracting the value of such extra or double trading stamp or stamps, or similar things of the same value, is below cost to the retailer as defined in the Oklahoma "Unfair Sales Act"; and

It is ORDERED by the Court that this amended temporary restraining order be, and the same is hereby decreed to remain in full force and effect until the 11th day of July, 1955, at 10:00 A.M. (to which date, by previous order of [fol. 100] this Court, the preliminary matters pending herein have been continued for hearing), or until the further order of the Court herein.

HEREOF FAIL NOT UNDER PENALTY OF LAW.

To all of which, the defendant EXCEPTS, and EXCEPTIONS are allowed by the Court.

ENTERED in open court on April 1st, 1955, and signed this 7 day of April, 1955.

F. B. H. SPELLMAN

F. B. H. Spellman
District Judge.

[fol. 101]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY,
STATE OF OKLAHOMA

[Title omitted]

AMENDMENT TO PETITION—Filed June 24, 1955

Comes now the plaintiff, by leave of Court first had and obtained and files herewith its amendment and supplement to its petition and in further support of its suit against the said defendant, Safeway Stores, Inc., a foreign corporation, alleges and states:

That the advertising for sale, offering for sale and selling complained of in plaintiff's petition herein, in addition to violating the Unfair Sales Act, also violates the terms and provisions of Article IX, Section 45, of The Constitu-
[fol. 102] tion of the State of Oklahoma, which provides as follows:

> "Until otherwise provided by law, no person, firm, association or corporation engaged in the production, manufacture, distribution, or sale of any commodity of general use, shall, for the purpose of creating a monopoly, or destroying competition in trade, discriminate between different persons, associations, or corporations, or different sections, communities, or cities of the State, by selling such commodity at a lower rate in one section, community, or city than in another, after making due allowance for the difference, if any, in the grade, quantity, or quality, and in the actual cost of transportation from the point of production or manufacture."

That the advertising for sale, offering for sale and selling complained of in plaintiff's petition, is also violative of the terms of the provisions of Oklahoma Statutes Annotated, Title 79, Sections 1 to 7 inclusive, Sections 21 to 37 inclusive, and Sections 81 to 87 inclusive, relating to combinations in restraint of trade and unfair discrimination or competition.

WHEREFORE, plaintiff asks for relief as prayed for in its petition filed herein.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC.,
a corporation,
Plaintiff

By: MISKOVSKY and MISKOVSKY

By: GEORGE MISKOVSKY
GEORGE MISKOVSKY

Attorneys for Plaintiff

[fol. 103] LEAVE GRANTED 24 day of June, 1955, TO FILE THIS AMENDMENT TO PETITION OUT OF TIME.

CLARENCE MILLS,
Judge.

[File endorsement omitted]

[fol. 104]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY,
STATE OF OKLAHOMA

[Title omitted]

REPLY TO ANSWER—Filed June 24, 1955

Comes now the plaintiff, Oklahoma Retail Grocers Association, Inc., a corporation, and for reply to the answer of said defendant herein, denies each and every allegation therein contained.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC.,
a corporation,
Plaintiff

By: MISKOVSKY and MISKOVSKY

By: GEORGE MISKOVSKY
George Miskovsky

Attorneys for Plaintiff.

[File endorsement omitted]

[fol. 105]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA

[Title omitted]

DEFENDANT'S CROSS-PETITION AGAINST PLAINTIFF, LOUIE J. SPEED, INC., DBA SPEED'S FOOD MARKET #1—Filed June 28, 1955

Defendant, for its cross-petition against plaintiff above named, alleges and states:

I

Defendant makes a part hereof all the allegations of its answer heretofore filed herein, and further alleges and states that plaintiff is a corporation and is engaged in and carries on a retail grocery business at Oklahoma City, [fol. 106] Oklahoma, and both plaintiff and defendant are engaged in the retail grocery business, and advertise, offer for sale and sell at retail various articles of merchandise in direct competition with each other in said city. That plaintiff is a member of the Oklahoma Retail Grocers Association, Inc., a corporation, for whose benefit this action is brought and is a party plaintiff to this action.

II

That this cross-Petition is prosecuted under the provisions of the Oklahoma Unfair Sales Act, Title 15, Oklahoma Statutes Annotated, Sections 598.1 to 598.11, inclusive, and defendant is injured by the violation, and threatened violation, of said Act by plaintiff, as herein alleged, and is without an adequate remedy at law, and is authorized by said Act to maintain this cross-petition.

III

That said plaintiff, at all times mentioned in the petition herein, and, for a number of years prior to the filing thereof, has advertised, offered for sale, and sold various items of merchandise, including the items set forth in

plaintiff's petition, below cost to the retailer, as defined in said Act; that the advertising, offering for sale and sale of said articles of merchandise by plaintiff at all times mentioned herein was done with the intent and purpose of inducing the purchase of other merchandise, or of unfairly [fol. 107] diverting trade from a competitor, or otherwise injuring a competitor or impairing and preventing fair competition, or injuring the public welfare; and the result of such advertising, offering for sale and sale tended to deceive purchasers, or prospective purchasers, or to substantially lessen competition or to unreasonably restrain trade or tend to create a monopoly in the retail grocery business in Oklahoma City, Oklahoma, in violation of said Act.

IV

That plaintiff, at all times mentioned in the petition herein, and for more than two years prior thereto, has advertised, offered for sale and sold various items of merchandise, including the items of merchandise set forth in plaintiff's petition, at or below the minimum markon prescribed by the Oklahoma Unfair Sales Act, and, in addition thereto, plaintiff sold, issued and distributed to plaintiff's customers who purchased such articles trading stamps, coupons, redeemable cash register receipts, or other evidences of credit having a cost or value of not less than 2.8% of the prices of said articles on each day except Wednesday, and similar evidences of credit having a cost or value of not less than 5.6% of the sales price of such articles on Wednesday of each week, without making or collecting any additional charge therefor, as is shown by Exhibits "A" to "P", inclusive, attached hereto and made a part hereof; that plaintiff advertised, offered [fol. 108] for sale and sold each of the items appearing on said exhibits below the minimum markon required by said Unfair Sales Act, and the sales price of said articles set forth therein was thereby reducted to the extent of the cost or value of such evidences of credit.

V

Defendant further alleges, in the alternative, that the items of merchandise shown on Exhibits "A" to "P", inclusive, were advertised, offered for sale and sold by said plaintiff with such evidences of credit at a combined price, and such evidences of credit were offered as a gift or given with the sale of one or more other items and that the sale, gift or distribution of such evidences of credit with other articles of merchandise constitutes the sale of one or more items at a combined price, as defined by Section 598.2(d), Title 15, Oklahoma Statutes Annotated, and such plaintiff violated such provision by not including the cost of each thereof in determining the cost to the retailer, as defined by said Act.

VI

That the advertising, offering for sale and sale by plaintiff of each of said articles of merchandise, hereinabove set forth and descrived in said exhibits, was done with the intents and purposes above set forth and have tended to deceive purchasers, or prospective purchasers, [fol. 109] substantially lessen competition, unreasonably restrain trade, and have tended to create a monopoly in the retail grocery business in Oklahoma City, Oklahoma. That plaintiff threatens to illegally continue to advertise, offer for sale and sell at retail the articles of merchandise referred to herein, and other like articles, at or below the minimum markon prescribed by the Oklahoma Unfair Sales Act, and to sell, issue, or distribute to plaintiff's customers, trading stamps, coupons, redeemable cash register receipts, and other evidences of credit, thereby reducing the price of said articles sold by plaintiff below the minimum markon prescribed by said Act to the extent of the cost or value of such evidences of credit; that such to defendant, and defendant has no adequate remedy at actions by plaintiff have and will cause irreparable damage law.

VII

That upon a hearing hereof, plaintiff should be permanently restrained and enjoined from advertising, offering

for sale or selling any of the items set forth in Exhibits "A" to "P", inclusive, or any similar items at prices which are less than the minimum markon prescribed by the Oklahoma Unfair Sales Act, either before or after deducting the cost or value of the trading stamps, coupons, redeemable cash register receipts, or other things of value which are given or distributed by plaintiff with the sale [fol. 110] of such articles of merchandise, or from otherwise violating the Oklahoma Unfair Sales Act by giving or issuing said evidences of credit with articles of merchandise sold by them when the prices at which such articles are sold, before or after deducting the cost or value of such evidences of credit, are less than the minimum markon prescribed by said Act.

WHEREFORE, premises considered, defendant prays that upon a final hearing hereof the Court issue a permanent injunction, enjoining and restraining plaintiff from advertising, offering for sale or selling any of the items set forth in Exhibit "A" to "P", inclusive, attached hereto, or any similar articles at prices which are less than the minimum markon prescribed by the Oklahoma Unfair Sales Act, either before or after deducting the cost or value of trading stamps, coupons, redeemable cash register receipts, or other things of value which are given or distributed by plaintiff with the sale of such articles of merchandise, or from otherwise violating the Oklahoma Unfair Sales Act by the giving of such evidences of credit with articles of merchandise sold by plaintiff when the prices at which such articles are sold, before or after deducting the cost or value of such evidences of credit, are less than the minimum markon prescribed by the Oklahoma Unfair Sales Act, and for such other relief as it may be entitled to in the premises.

[fol. 111] EMBRY, CROWE, TOLBERT, BOXLEY & JOHNSON

By V. P. CROWE
V. P. Crowe

ATTORNEYS FOR DEFENDANT, SAFEWAY STORES, INC., A CORPORATION

Duly sworn to by V. P. Crowe, jurat omitted in printing.

[fol. 130]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA

[Title omitted]

ORDER GRANTING LEAVE TO FILE CROSS-PETITIONS—July 1, 1955

BE IT REMEMBERED that on April 20, 1955, the Court determined that all members of the Oklahoma Retail Grocers Association are now actually plaintiffs in said suit, and, in open court, it was agreed between the attorneys for plaintiff and defendant that defendant might file cross-petitions in this cause against any of the members of plaintiff association, without any objection on the part of plaintiff that any such members are not parties to the suit.

Now, on this 1st day of July, 1955, upon application of defendant, leave is hereby granted defendant to file cross-petitions heretofore filed on the 28th day of June, 1955, against the following named members of plaintiff association:

A. M. Childress, a sole trader, dba Al's Thrif-T-Wise;

Stockton's Super Market, Inc., a corporation;

[fol. 131]

Louie J. Speed, an individual, dba Speed's Food Market No. 3;

Buford C. Greenhaw, a sole trader, dba Greenhaw's Market No. 2;

Louie J. Speed, Inc., dba Speed's Food Market No. 1;

LeRoy K. Watters, dba Lakeside Super Market No. 1;

Kenneth R. Watters, dba Lakeside Super Market #2;

Scott's Food Mart No. 2, Inc.;

Robert E. Potter, dba Potter's Thrif-T-Wise;

Miskovsky Foods, Inc.;

Louis W. Whittaker, dba Whittaker's Food Store No. 5;

E. P. Spencer, a sole trader, dba Spencer's Super Market;

Vernon H. Scott and Harlan R. Scott, partners, dba Scott's Foods Mart.

F. B. H. SPELLMAN
ASSIGNED DISTRICT JUDGE

[File endorsement omitted]

[fol. 132]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY, STATE OF OKLAHOMA

[Title omitted]

ORDER CONTINUING TEMPORARY RESTRAINING ORDER—July 11, 1955

On this 11th day of July, 1955, the above styled and numbered cause came on for hearing pursuant to order of continuance entered herein on April 1, 1955; and the plaintiff, Oklahoma Retail Grocers Association, Inc., a corporation, appearing by its counsel of record, and the defendant, Safeway Stores, Inc., a foreign corporation, appearing by its counsel of record;

And the Court having heard statements of counsel, and it appearing that this cause is not ready for trial at this time, finds:

[fol. 133] That the temporary restraining order entered by the Court herein on October 25, 1954, and issued against the defendant, Safeway Stores, Inc., a foreign corporation, and the amendments thereto, should be continued in full

'orce and effect until the 12th day of September, 1955, or ıntil otherwise ordered by the Court herein.

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court that the temporary restraining order entered by he Court herein on October 25, 1954, and issued against he defendant, Safeway Stores, Inc., a foreign corporation, nd the amendments thereto, be and the same are hereby ontinued in full force and effect until the 12th day of eptember, 1955, or until otherwise ordered by the Court erein.

F. B. H. SPELLMAN

F. B. H. Spellman,
District Judge.

[File endorsement omitted]

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ol. 143]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY, STATE OF OKLAHOMA

[Title omitted]

NSWER TO CROSS PETITION AGAINST PLAINTIFF, LOUIS J. SPEED, INC., d. b. a. SPEED'S FOOD MARKET #1—Filed August 1, 1955

The plaintiff, Louie J. Speed, Inc., d.b.a. Speed's Food arket #1, for his answer to defendant's cross-petition, tes:

1. That the said plaintiff denies the allegations con- ned in paragraph I, except that the plaintiff Speed nits it is engaged in the retail grocery business in lahoma City, Oklahoma, and that said plaintiff Speed l. 144] is in competition with defendant, which also is in retail grocery business; and the plaintiff Speed further nits that it is a member of the Oklahoma Retail Grocers sociation.

. The plaintiff Speed denies the allegations contained paragraphs II, III, IV, V, VI, and VII.

And, further replying to defendant's cross-petition, the plaintiff, Louie J. Speed, Inc., d.b.a. Speed's Food Market #1, alleges:

3. As a matter of merchandising policy, the plaintiff Speed adopted, and for a number of years has followed, the practice of allowing to its custimers a uniform storewide discount for the payment of cash (cash at the time of purchase, or within the normal discount period, but not later than the 15th proximo). This has been accomplished by the issuance of cash discount stamps, otherwise known as trading stamps, at the rate of one stamp for each 10¢ paid by the customer. Said stamps are supplied to said plaintiff, pursuant to a license agreement, by The Sperry and Hutchinson Company. These stamps are pasted by said plaintiff's customers in books which, when filled, contain 1200 stamps, representing $120.00 in purchases. When the customer has filled at least one book with such stamps, he may present the stamps to The Sperry and Hutchinson Company for redemption in merchandise at its redemption station in Oklahoma City, or he may mail it to one of the warehouses maintained by The Sperry and Hutchinson Company for redemption [fol. 145] in merchandise described in its mail order catalogue. For each book of stamps, The Sperry and Hutchinson Company provides merchandise of the approximate current retail value of $3.00, so that, in effect, the discount which defendant allows through the use of such stamps amounts to approximately 2.50%. Said discount is allowed without regard to whether a particular item is sold at or above "cost", as that term is defined in The Unfair Sales Act, but the price charged and collected by said plaintiff is never less than statutory cost. Said plaintiff offers and issues "S&H" cash discount stamps to its customers on a storewide basis, in accordance with the terms of its contracts with The Sperry and Hutchinson Company, not on the basis of items of merchandise purchased, some of which may be 6% items, but on the total amount of cash paid.

Copies of the license agreement between this plaintiff and The Sperry and Hutchinson Company, an example of

the stamp saver's book, and an example of the catalogue of The Sperry and Hutchinson Company, are filed herewith as "Exhibit A", "Exhibit B", and "Exhibit C", respectively.

4. Upon information and belief, The Sperry and Hutchinson Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and is licensed to do business in the State of Oklahoma; The Sperry and Hutchinson Company has been engaged nationally in the trading stamp business for more than [fol. 146] fifty years, and is presently qualied to do business in each of the forty-eight states of the Union, and is actually engaged in the trading stamp business in forty-five of said states; and, in the very great majority of said states, The Sperry and Hutchinson Company does business exactly as it does in the State of Oklahoma.

5. The use of trading stamps by this plaintiff, as aforesaid, is a trade practice long established and constitutes one of the only practicable means of allowing a discount for, and encouraging the payment of, cash on small purchases, and does not have the effect of reducing prices.

6. The use of trading stamps by this plaintiff, as aforesaid, does not result in a reduction in price below statutory cost and therefore does not violate The Unfair Sales Act.

WHEREFORE, having fully answered, the plaintiff, Louie J. Speed, Inc., d.b.a. Speed's Food Market #1, asks:

That the defendant, Safeway Stores, Inc., a foreign corporation, take nothing by its separate cross-petition against this plaintiff; and

That this plaintiff recover its costs herein incurred and expended.

LOUIE J. SPEED, INC.,
d.b.a. SPEED'S FOOD MARKET #1,
Plaintiff.

[fol. 147] By: MISKOVSKY and MISKOVSKY,
W. J. HOLLOWAY, SR., and
LOONEY, WATTS, ROSS, LOONEY & NICHOLS

By:
GEORGE MISKOVSKY
GEORGE MISKOVSKY

Attorneys for Plaintiff,
Louie J. Speed, Inc., d.b.a.
Speed's Food Market #1.

EXHIBIT "A" ATTACHED TO ANSWER

Form 22-E-50-S 5440

THIS AGREEMENT, made this 14th day of March, 1952 by and between THE SPERRY AND HUTCHINSON COMPANY, a corporation of the State of New Jersey, hereinafter referred to as the "LICENSOR", and Speeds Super Markets, Louie J. Speed, President, doing a Super Food Mkt business at

No. 1 715 N W 36th
No. 2 1455 Westwood Bvld
No. 3 1228 N Penn Ave. Oklahoma City, Okla.

No. and Street City or Town State

hereinafter referred to as the "LICENSEE", WITNESSETH:

WHEREAS, the LICENSOR has devised, extensively advertised, popularized and successfully put into operation in many cityes in various states of the Union a CO-OPERATIVE CASH DISCOUNT SYSTEM whereby there may be offered to retail consumers a cash discount on all cash payments, ir-
[fol. 148] respective of their amount, thereby inviting and rewarding cash or prompt payment for goods sold, decreasing the merchant's losses from slow or bad accounts and attaacting and greatly increasing the volume of his cash trade; and

WHEREAS the LICENSEE desires to avail himself of the use of the LICENSOR'S aforesaid CO-OPERATIVE CASH DISCOUNT SYSTEM for said purposes:

THE LINCENSOR AGREES:

FIRST: To license and authorize, and does hereby license and authorize, the Licensee to install and use in connection with his business at the aforesaid place its said CO-OPERATIVE CASH DISCOUNT SYSTEM and to use its SH CO-OPERATIVE DISCOUNT STAMPS as cash discount symbols or tokens in connection therewith.

SECOND: To print the name and business address of the Licensee in any directory of merchants, using its aforeaaid CO-OPERATIVE CASH DISCOUNT SYSTEM, hereafter issued and distributed by it in said City.

THIRD: To furnish to the Licensee advertising signs in quantities sufficient for use inside and outside his store to make known to the public that he has adopted its aforesaid CO-OPERATIVE CASH DISCOUNT SYSTEM.

FOURTH: To furnish the Licensee with its cash discount symbols or tokens in the form of S.H. CO-OPERATIVE DISCOUNT STAMPS to be issued to his customers as hereinafter provided.

[fol. 149] FIFTH: To furnish for distribution its stamp books, in which customers may paste and accumulate said stamps, and to redeem the said stamps, when collected in the manner herein prescribed and presented at any of its stores or redemption stations by the Licensee's customers, by giving them in exchange therefor cash or goods, wares or merchandise of their own selection, as described in its catalogues then current, and subject to the conditions herein and as printed in said catalogues and stamp books.

THE LICENSEE AGREES:

SIXTY: To adopt and use the Licensor's aforesaid CO-OPERATIVE CASH DISCOUNT SYSTEM, including its cash discount symbols or tokens designated as S.H. CO-OPERATIVE DISCOUNT STAMPS furnished for use in connection therewith during the term of this agreement.

SEVENTH: To advertise the adoption and use of the Licensor's CO-OPERATIVE CASH DISCOUNT SYSTEM and of the

S.H. Co-operative Discount Stamps in connection therewith by displaying in the windows or other prominent places in and about the store such advertising signs as shall be furnished by the Lincensor from time to time, and also, in all newspaper and other advertisements published by or for him, to state the fact, that he had adopted the aforesaid Co-operative Cash Discount System, by inserting in such advertisements at least "We Issue S.H. Co-operative Discount Stamps".

[fol. 150] Eighth: To order and receive from the Lisensor its said cash discount symbols or tokens, designated as S.H. Co-operative Discount Stamps, in lots of not less than 100 pads, and a minimum amount of not less than 400 pads every six months, each pad to contain ..... stamps.

Ninth: To pay the Licensor for the use of its Co-operative Cash Discount System, and its stamps as cash discount symbols or tokens in connection therewith, an amount measured by the number of pads of stamps ordered and delivered at the rate of 14.00 dollars per pad payable on delivery of same.

Tenth: To offer said stamps to all customers when making cash payments, as herein provided, and when accepted to issue to the customers one of said stamps for each ten cents, represented in such payments, as a discount in consideration of the payment of cash when made either C.O.D. or, at the option of the Licensee, on or before the 15th proximo, and only for redemption by the Licensor.

Eleventh: In consideration of the license to use the Licensor's Co-operative Cash Discount System and the services to be performed by it and the initial and other expenses incurred in installing its aforesadid cash discount system in the Licensee's place of business and in educating and making known to the public the advantages of the same, the Licensee agrees not to procure, sell or dispose of the Licensor's said said stamps in any manner except as herein provided.

[fol. 151] It Is Mutually Agreed between the parties hereto that the property in and title to said stamps and

advertising signs shall remain in the Licensor and shall not in any event pass to the Licensee or any person, firm or corporation, and that this agreement shall remain in force for Three years from March 14 1952 and shall thereafter renew itself for successive periods of equal duration until termination by either party giving to the other written notice of intention to terminate the agreement at the close of the then current period. Such notice shall be given at least thirty days prior to the close of such period and upon such notice being given the Licensor may thereafter omit from its printed directory and advertisements the name of the Licensee.

Upon the termination of this agreement the Licensee shall cease to use any unissued stamps then remaining in his hands and shall return to the Locensor all advertising signs and all of said stamps and the Licensor shall repay to the Licensee any amount therefor paid by him, for its services and for the use of its system, measured by the number of stamps remaining unissued and so returned, provided the same are undetached from the original pads, and the Licensee shall inform his customers that any stamps theretofore issued by him and then outstanding will be redeemed by the Licensor.

If the Licensee shall remove from said address or change his business in any material respect, or issue, use or give [fol. 152] to his customers any other stamps, coupons or similar devices, which may cause confusion or impair the good will of the Licensor, or violate any of the provisions of this agreement by him to be performed, or if at any time during the term of this agreement proceedings in bankruptcy shall be instituted by or against the Licensee, or if a receiver or trustee shall be appointed of the Licensee's property, or this agreement shall by operation of law devolve upon or pass to any person or persons other than said Licensee, the Licensor may at its option terminate this agreement by written notice and upon the exercise of such option this agreement shall cease and determine and no acquiescence by the Licensor in respect of any of the aforesaid matters shall operate as a waiver of its right to exercise such option.

It Is Mutually Agreed that no person has authority to alter or add to the foregoing printed form of agreement in any way and no alteration or addition thereto shall be effective for any purpose, notwithstanding any part performance, unless countersigned by an officer of the Licensor at its Home Office, New York City.

It Is Mutually Understood and Agreed that this agreement is made for the benefit of the Licensee's customers as well as of the parties hereto.

In Witness Whereof, the parties have executed the foregoing agreement the day and year above written.

[fol. 153] The Sperry and Hutchinson Company,
(Licensor)

By George Seiback Paul J. McCarty

Speed's Super Markets
Licensee.

Louie J. Speed

Signature of
Licensee Verified

Name Volume 1 1/2 Million

Date .....

Form 22 M Rev.—12/1/51 S-9183

This Agreement, made this 23rd day of December 1954 by and between the Sperry and Hutchinson Company, a corporation of the State of New Jersey, hereinafter referred to as the "Licensor", and Louie J. Speed, Inc. doing a Super Food Market business at 715 N.W. 36th Street
No. and Street
Oklahoma City Oklahoma hereinafter referred to as the
City or Town State
"Licensee", Witnesseth:

Whereas, the Licensor has devised, extensively advertised, popularized and successfully put into operation in

many cities in various states of the Union a Co-operative Cash Discount System whereby there may be offered to retail consumers a cash discount on all cash payments, [fol. 154] irrespective of their amount, thereby inviting and rewarding cash or prompt payment for goods sold, decreasing the merchant's losses from slow or bad accounts and attracting and greatly increasing the volume of his cash trade; and

Whereas, the Licensee desires to avail himself of the use of the Licensor's aforesaid Co-operative Cash Discount System for said purposes:

The Licensor Agrees:

First: To license and authorize, and does hereby license and authorize, the Licensee to install and use in connection with his business at the aforesaid place its said Co-operative Cash Discount System and to use its "S&H" Co-operative Discount Stamps as cash discount symbols or tokens in connection therewith.

Second: To print the name and business address of the Licensee in any directory of merchants, using its aforesaid Co-operative Cash Discount System, hereafter issued and distributed by it in said City.

Third: To furnish to the Licensee advertising signs in quantities sufficient for use inside and outside his store to make known to the public that he has adopted its aforesaid Co-operative Cash Discount System.

Fourth: To furnish the Licensee with its cash discount symbols or tokens in the form of "S&H" Co-operative Discount Stamps to be issued to his customers as hereinafter provided.

[fol. 155] Fifth: To furnish for distribution its stamp books, in which customers may paste and accumulate said stamps, and to redeem the said stamps, when collected in the manner herein prescribed and presented at any of its stores or redemption stations by the Licensee's customers, by giving them in exchange therefor cash or goods, wares or merchandise of their own selection, as described in its

catalogues then current, and subject to the conditions herein and as printed in said catalogues and stamp books.

THE LICENSEE AGREES:

SIXTH: To adopt and use the Licensor's aforesaid CO-OPERATIVE CASH DISCOUNT SYSTEM, including its cash discount symbols or tokens designated as "S&H" CO-OPERATIVE DISCOUNT STAMPS furnished for use in connection therewith during the term of this agreement.

SEVENTH: To advertise the adoption and use of the Licensor's CO-OPERATIVE CASH DISCOUNT SYSTEM and of the "S&H" CO-OPERATIVE DISCOUNT STAMPS in connection therewith by displaying in the windows or other prominent places in and about the store such advertising signs as shall be furnished by the Licensor from time to time, and also, in all newspaper and other advertisements published by or for him, to state the fact, that he had adopted the aforesaid CO-OPERATIVE CASH DISCOUNT SYSTEM, by inserting in such advertisements at least "WE ISSUE "S&H" CO-OPERATIVE DISCOUNT STAMPS."

[fol. 156] EIGHTH: To order and receive from the Licensor its said cash discount symbols or tokens, designated as "S&H" CO-OPERATIVE DISCOUNT STAMPS, in lots of not less than 100 pads, and a minimum amount of not less than 400 pads every six months, each pad to contain ..... stamps.

NINTH: To pay the Licensor for the use of its CO-OPERATIVE CASH DISCOUNT SYSTEM, and its stamps as cash discount symbols or tokens in connection therewith, an amount measured by the number of pads of stamps ordered and delivered at the rate of $14.00 dollars per pad payable on delivery of same.

TENTH: To offer said stamps to all customers when making cash payments, as herein provided, and when accepted to issue to the customers one of said stamps for each ten cents, represented in such payments, as a discount in consideration of the payment of cash when made either C.O.D. or, at the option of the Licensee, on or before the 15th proximo, and only for redemption by the Licensor.

ELEVENTH: In consideration of the license to use the Licensor's CO-OPERATIVE CASH DISCOUNT SYSTEM and the services to be performed by it and the initial and other expenses in installing its aforesaid cash discount system in the Licensee's place of business and in educating and making known to the public the advantages of the same, the Licensee agrees not to procure, sell or dispose of the Licensors's said stamps in any manner except as herein [fol. 157] provided.

IT IS MUTUALLY AGREED between the parties hereto that the property in and title to said stamps and advertising signs shall remain in the Licensor and shall not in any event pass to the Licensee or any person, firm or corporation, and that this agreement shall remain in force for Three years from December 23 1954 and shall thereafter renew itself for successive periods of equal duration until termination by either party giving to the other written notice of intention to terminate the agreement at the close of the then current period. Such notice shall be given at least thirty days prior to the close of such period and upon such notice being given the Licensor may thereafter omit from its printed directory and advertisements the name of the Licensee.

Upon the termination of this agreement the Licensee shall cease to use any unissued stamps then remaining in his hands and shall return to the Licensor all advertising signs and all of said stamps and the Licensor shall repay to the Licensee any amount therefore paid by him, for its services and for the use of its system, measured by the number of stamps remaining unissued and so returned, provided the same are undetached from the original pads, and the Licensee shall inform his customers that any stamps theretofore issued by him and then outstanding will be redeemed by the Licensor.

If the Licensee shall remove from said address or change [fol. 158] his business in any material respect, or issue, use or give to his customers any other stamps, coupons or similar devices, which may cause confusion or impair the good will of the Lessor, or violate any of the provisions of this agreement by him to be performed, or if at any

time during the term of this agreement proceedings in bankruptcy shall be instituted by or against the Licensee, or if a receiver or trustee shall be appointed of the Licensee's property, or this agreement shall by operation of law devolve upon or pass to any person or persons other than said Licensee, the Licensor may at its option terminate this agreement by written notice and upon the exercise of such option this agreement shall cease and determine and no acquiescence by the Licensor in respect to any of the aforesaid matters shall operate as a waiver of its right to exercise such option.

IT IS MUTUALLY AGREED that no person has authority to alter or add to the foregoing printed form of agreement in any way and no alteration or addition thereto shall be effective for any purpose, notwithstanding any part performance, unless countersigned by an officer of the Licensor at its Home Office, New York City.

It Is Mutually Understood and Agreed that this agreement is made for the benefit of the Licensee's customers as well as of the parties hereto.

IN WITNESS WHEREOF, the parties have executed the [fol. 159] foregoing agreement the day and year above written.

THE SPERRY AND HUTCHINSON COMPANY, (Licensor)
By GEORGE SEIBACK

LOUIE J. SPEED, INC.
Licensee.
By LOUIE J. SPEED

Signature of
Licensee Verified

Name .....

Date .....

[fol. 162]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY, STATE OF OKLAHOMA

[Title omitted]

REPLY TO ANSWER—Filed August 1, 1955

The plaintiff, Oklahoma Retail Grocers Association, Inc., a corporation, for its reply to defendant's answer herein, states:

1. The plaintiff denies the allegations contained in paragraphs 5 through 9, except the plaintiff admits that the persons and corporations listed on pages 2 and 3 are members of the Oklahoma Retail Grocers Association and that some of said members issue trading stamps in the manner described in the reply to defendant's cross-complaint against Louie J. Speed, Inc., d.b.a. Speeds Food Market #1, one of the Plaintiffs herein.

[fol. 163] 2. The position taken by defendant in its answer herein makes it evident that its sales below cost were made without legal justification. Section 598.7 of The Unfair Sales Act permits a retailer to meet the price of a competitor who is selling "at cost to him", i.e., at a lawful price. A retailer, however, may not sell below cost in order to meet his competitor's unlawful price. It follows that if defendant's competitors, who issue trading stamps, unlawfully cut prices below cost (as defendant intimates in paragraph 7), then defendant was not entitled to cut its prices to meet trading stamp competition. If, on the other hand, the issuance of trading stamps by competitors did not unlawfully cut prices below cost (as defendant intimates in paragraph 5), then there was in fact no lower price for defendant to meet when it cut its prices. In either event, the defendant's alleged defense of meeting competition must fail.

WHEREFORE, plaintiff prays:

That the defendant be denied any and all relief under its answer filed herein; and

That plaintiff have judgment as prayed for in its petition filed herein.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC.,
a corporation, Plaintiff

By: MISKOVSKY and MISKOVSKY
W. J. HOLLOWAY, SR., and
LOONEY, WATTS, ROSS, LOONEY & NICHOLS

[fol. 164] By: GEORGE MISKOVSKY
George Miskovsky

Attorneys for Plaintiff.

[File endorsement omitted]

[fol. 165]
IN THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA

[Title omitted]

REPLY OF DEFENDANT TO ANSWER OF LOUIS J. SPEED, INC.—
Filed August 16, 1955

Defendant, for its reply to the answer of Louis J. Speed, Inc., to the cross-petition of the defendant herein, denies each, every and all the allegations and averments in said answer contained which are contrary to or inconsistent with the allegations of defendant's cross-petition.

Defendant specifically denies that the trading stamps issued and distributed by said plaintiff to it's customers are, or constitute, cash discounts; that even if such trading stamps were construed to be cash discounts, which they are not, the giving of cash discounts upon items of merchandise sold by plaintiff at or below the minimum markon required by the Oklahoma Unfair Sales Act, violates said Act, and the issuing and distributing of trading stamps to plaintiff's customers with the sale of articles of merchandise sold at prices which, after deducting the cost or value of such [fol. 166] stamps, are less than the minimum markon required by the Oklahoma Unfair Sales Act, with the intent and effect alleged in defendant's cross-petition, constitutes

a violation of said Act; or, in the alternative, the issuing and distributing of such stamps with the sale of other items constitutes a sale of two or more items at a combined price as defined in said Act, and should be enjoined.

WHEREFORE, defendant prays as in its original cross-petition herein.

EMBRY, CROWE, TOLBERT, BOXLEY & JOHNSON,

By: V. P. CROWE

V. P. Crowe—Attorneys for Defendant.

[File endorsement omitted]

[fol. 167]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY, STATE OF OKLAHOMA

[Title omitted]

ORDER CONTINUING TEMPORARY RESTRAINING ORDER—September 12, 1955

On this 12th day of September, 1955, the above styled and numbered cause came on for hearing pursuant to order of continuance entered herein on July 11th, 1955; and the plaintiff, Oklahoma Retail Grocers Association, Inc., a corporation, appearing by its counsel of record, and the defendant, Safeway Stores, Inc., a foreign corporation, appearing by its counsel of record;

And the Court, having heard the statements of counsel, and it appearing that this cause is not ready for trial at this time, finds:

That the temporary restraining order entered by the Court herein on October 25th, 1954, and issued against the defendant, Safeway Stores, Inc., a foreign corporation, and the amendments thereto, should be continued in full force and effect until the 17th day of October, or until otherwise [fol. 168] ordered by the Court herein.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED by the Court that the temporary restraining order entered by the

Court herein on October 25th, 1954, and issued against the defendant, Safeway Stores, Inc., a foreign corporation, and the amendments thereto, be, and the same are hereby continued in full force and effect until the 17th day of October, 1955, or until otherwise ordered by the Court herein.

F. B. H. SPELLMAN.

F. B. H. Spellman
District Judge.

[File endorsement omitted]

[fol. 169]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY,
STATE OF OKLAHOMA

[Title omitted]

NOTICE TO ALLOW INSPECTION OF DOCUMENTS—Filed September 21, 1955

To: Safeway Stores, Inc., Defendant; and
Embry, Crowe, Tolbert, Boxley & Johnson,
Its Attorneys of Record:

The plaintiff hereby demands of you permission to inspect, and to make notes concerning the following documents, now in your possession within the Oklahoma Division, relating to the merits of this action, to-wit:

All documents, and other evidence requested in a subpoena duces tecum for deposition on July 6th, 1955, concerning: All books, records, documents, and tangible things of every kind relating to the formulation of defendant's, Safeway Stores, Inc.'s, policy of combatting trading stamps or to the carrying out of said defendant's efforts to combat trading stamps in the Oklahoma Division area and elsewhere, included without limitation:

1. All Essex Advertising, Service Bulletins issued since January 1st, 1953;

2. Every document passing between any employee of Safeway Stores, Inc., its subsidiaries, affiliates, [fol. 170] or divisions since January 1st, 1953, relating to trading stamps;

3. Every memorandum, notation, or document, of any kind, prepared by any employee of defendant, Safeway Stores, Inc., since January 1st, 1953, relating to trading stamps or to merchants who give trading stamps;

4. Every document passing between any employee of defendant, Safeway Stores, Inc., and its public relation counsel, Braun & Company, since January 1st, 1953, relating to trading stamps or to merchants who give trading stamps;

5. All evidence relied upon by Safeway Stores, Inc., and its responsible officers and agents, in concluding that the use of trading stamps by retail food stores in Oklahoma was, or was not, affecting Safeway's sales volume;

6. All documents reflecting the effect on Safeway's sales of the Safeway price-cutting campaign started on or about July 21st, 1954, allegedly to meet trading stamp competition;

7. All documents setting forth changes of Company policy, or the initiation of new policy, or the application of Company policies only in the Oklahoma Division or any subdivision thereof, filed with the Administrative Office of the Company, in Oakland, California, pursuant to Management Guide, Section 2, page 16, for the two years past and the months past of the current year, so far as such notification of changes involves, either directly or indirectly, generally or specifically, matters of the retail operation as concerns loss leaders, pricing, promotions, and trading stamps; and

8. Complete file of "President's Bulletins", including "Policy Bulletins", "Operating Bulletins", and

"Information Bulletins", insofar as they relate [fol. 171] to pricing, trading stamps, and promotions, either directly or indirectly, applicable to Oklahoma City, together with the documents written in reply to such bulletins, for the two years past and the months past of the current year;

and, if the same is refused for four days from this date, you are notified that the plaintiff will apply to the Judge of this Court for an order compelling you to allow such inspection and notation.

Dated this 21st day of September, 1955.

MISKOVSKY and MISKOVSKY
W. J. HOLLOWAY: and
LOONEY, WATTS, ROSS, LOONEY & NICHOLS

By: GEORGE MISKOVSKY
GEORGE MISKOVSKY

Attorneys for Plaintiff

Service of the foregoing Notice accepted by Embry, Crowe, Tolbert, Boxley & Johnson, Attorneys for Defendant, this 21 day of September, 1955.

EMBRY, CROWE, TOLBERT, BOXLEY & JOHNSON

By: JOHN W. SWINFORD

Attorneys for Defendant.

[File endorsement omitted]

[fol. 178]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY,
STATE OF OKLAHOMA

[Title omitted]

SUPPLEMENTAL ANSWER TO CROSS-PETITION AGAINST LOUIE J. SPEED, INC., d. b. a. SPEED'S FOOD MARKET #1, and CLARIFYING PRAYER FOR AFFIRMATIVE RELIEF—Filed October 17, 1955

Plaintiff, Louie J. Speed, Inc., d.b.a. Speed's Food Market #1, with leave of Court first obtained, for his further answer to defendant's cross-petition states:

1. Defendant, in paragraph V of its answer, has stated that the plaintiff Speed and certain other merchants offered their customers on Wednesdays "evidence of credit" (presumably meaning trading stamps) having a "cost to plaintiff of not less than 5.6%." This statement is repeated with respect to the plaintiff in paragraph IV of defendant's cross-petition.

2. These statements refer to the practice of offering what are known as "double stamps".

3. This practice has been voluntarily abandoned by the [fol. 179] plaintiff Speed, and all other members of plaintiff Association. As to them, the question of the validity of the practice is moot.

4. After the practice was voluntarily abandoned by the plaintiffs, it was adopted by the defendant through the issuance of double "cash-saver coupons" having a value of 6%.

5. In order to halt this conduct by the defendant, pendente lite, the plaintiff Association in this suit, and some of its members including the plaintiff Speed who are defendants in other pending actions brought by Safeway, requested and obtained temporary restraining orders, restraining the issuance of more than one stamp or coupon with values as specified.

6. There is pending no prayer specifically asking that this relief be made permanent, although the so-called "double stamp question" is clearly raised by defendant's cross-petition and by plaintiff Speed's reply thereto stating that trading stamps as issued by him are a discount for cash and as such have no effect on minimum prices under the Oklahoma Unfair Sales Act.

WHEREFORE, the plaintiff Speed prays:

That, in order to avoid any doubt on the issues to be settled in the cross-petition, the defendant be permanently enjoined from violating the Oklahoma Unfair Sales Act by [fol. 180] issuing or offering with articles priced at "cost" anything having a value in excess of an amount appropriate for a discount for cash.

MISKOVSKY and MISKOVSKY;
W. J. HOLLOWAY; and
LOONEY, WATTS, ROSS, LOONEY & NICHOLS

By GEORGE MISKOVSKY
GEORGE MISKOVSKY

Attorneys for Plaintiff.

Leave given to file out of time this 17 day of October, 1955.

F. B. H. SPELLMAN
Assigned Judge.

[File endorsement omitted]

[fol. 184]

IN THE DISTRICT COURT WITHIN AND FOR OKLAHOMA COUNTY, STATE OF OKLAHOMA

[Title omitted]

The Trial

APPEARANCES

BE IT REMEMBERED, that on the 17th day of October, 1955, this cause came on regularly for trial before the Honorable

F. B. H. Spellman, Assigned District Judge; the plaintiff appearing by Mr. George Miskovsky, of the Firm of Miskovsky & Miskovsky, Hightower Building, Oklahoma City, Oklahoma; Mr. W. J. Holloway, Sr., First National Building, Oklahoma City, Oklahoma; Mr. M. A. Ned Looney and Mr. Clyde Watts, of the Firm of Looney, Watts, Ross, Looney & Nichols, First National Building, Oklahoma City, Oklahoma; Mr. Ameule M. Lane and Mr. Robert Beshar, of the Firm of Casey, Lane & Mittendorf, 43 Exchange Place, New York City, New York; and Mr. David S. Maclay, 43 Exchange Place, New York City, New York; and the defendant appeared by Mr. V. P. Crowe and Mr. John W. Swinford, of the Firm of Embry, Crowe, Tolbert, Boxley & Johnson, First National Building, Oklahoma City, Oklahoma.

* * * * * * *

[fol. 193] PLAINTIFF'S CASE

L. O. BOWMAN, being called as a witness in behalf of plaintiff herein, after being first duly sworn upon oath to testify the truth, the whole truth and nothing but the truth, upon interrogation by counsel, testified as follows:

Direct examination.

By Mr. Miskovsky:

Question: State your name for the record, please?

By the Witness:

Answer: L. O. Bowman.

Q. Mr. Bowman, you are the Secretary-Manager of the Oklahoma Retail Grocers Association, is that correct?
A. That is correct.
Q. You are also the Secretary-Manager of the Oklahoma City Retail Grocers Association, is that correct?
A. That is correct.
Q. Both concerns are incorporated and duly licensed to do business within the State of Oklahoma, is that correct?
A. Yes, sir.

Q. Mr. Bowman, you are a resident of Oklahoma City?

A. I am.

Q. And your family consists of what?

A. A wife, and son and daughter.

Q. Will you please state to his Honor the names of the Directors and Officers of the Oklahoma Retail Grocers [fol. 194] Association?

A. I have that list here, and I will read them, because there are quite a number of them, if permissible.

• • • • • • • •

A. Mr. John Marrison, Norman, Oklahoma, President; Henry Couch, Ardmore, Oklahoma, Vice-President; Henry Komp, Oklahoma City, Treasurer; Morris Adams, Ponca City; Harold Carter, Vinita; P. A. Dale, Oklahoma City; Charles Dunbar, Mooreland; W. R. Fry, Guthrie; Cecil Smith, Durant; Blaine Puckett, Sayre; Ole Wedell, Muskogee; Ed Whitbeck, Seminole; and Lifus Woods, Altus.

Now the honorary Board members are, Scott Johnson, Tulsa; C. C. Precure, Britton; Marion Rogers, Tulsa; Glenn Douglas, Stillwater; Art Pemberton, Oklahoma City; Warren Englebrecht, Muskogee; W. W. Hudson, Coalgate; and Mel Landers, Nowata.

Q. Now Mr. Bowman, these were the officers and directors in 1954, during the times complained of in this proceeding, is that correct?

[fol. 195] A. That is right.

Q. And the Vice-President, I believe, is now the President?

A. That is right.

Q. And Mr. John Marrison, who was President in 1954, is now a member of the Board of Directors, and no longer President, is that correct?

A. That is correct. However, he is an honorary member of the Board of Directors.

Q. Yes; now will you please state to his Honor how many members there are in the State Association, approximately?

A. There are approximately seventeen hundred members.

Q. Mr. Bowman, the exhibit attached to the Petition here, in setting forth the names and places of residence of the members of your Association was prepared at your direction, is that correct?

A. Yes, sir, that is correct.

Q. I will direct your attention to plaintiff's Exhibit "A" now, and ask you to state if that sets forth the names on the exhibit attached to the Petition, and if that was prepared under your direction and sets out the names of the members of the Association at the time this Petition was filed?

A. That is right; this is the list.

By Mr. Miskovsky:

We offer that in evidence, your Honor.

• • • • • • • • •

[fol. 197] Q. Now Mr. Bowman, all of the Directors of the State Association are grocers, is that correct,—retail grocers?

A. That is correct.

Q. And actively engaged in the grocery business, including all of the Officers and Directors except yourself, is that correct?

A. That is correct.

Q. Mr. Bowman, how many members of the Association do you have in the Oklahoma City-Midwest City area?

A. Approximately two hundred and seventy-five.

Q. Mr. Bowman, would you please recite your employment record prior to becoming Secretary-Manager of the Oklahoma City Retail Grocers Association,—but before you do, have I asked you how long you have been serving in the capacity of Secretary-Manager?

A. You haven't asked that question.

Q. Well how long have you been acting as such?

A. About seven years,—a little over seven years.

Q. Yes, sir,—now will you please recite to his Honor, your employment record prior to becoming Secretary-Manager of the Oklahoma Retail Grocers Association?

[fol. 198] A. I served as Field Representative of the Association for about two years prior to becoming Secretary. At that time my duties was to contact grocers throughout the State and work with them on the Associational problems, and their problems. For ten years prior to becoming Field Secretary,—or Field Representative of the Associa-

tion, I was Sales Representative for General Mills, in the grocery products division, traveling principally in western Oklahoma and calling on retail grocers and wholesalers. For four and one-half years prior to that time I was Sales Representative for H. J. Heinz Company, and my contacts were with retail grocers, principally in western Oklahoma, partially east of the dividing line. Prior to that time I spent thirteen years in the retail grocery business, operating my own stores in Muskogee, Oklahoma. That takes me back to my beginning in the grocery field.

Q. Mr. Bowman, you say you were born in Arkansas,—did I understand you to say you were born in Arkansas?

A. That is right, I was.

Q. And how old were you when you came to Oklahoma?

A. I was nine years old.

Q. And how old were you when you entered the grocery business in Muskogee?

A. I was twenty.

Q. Twenty years old?

A. Yes, sir.

[fol. 199] Q. Then you have spent practically your entire adult life in the food industry, is that correct?

A. That is correct.

Q. Were you Secretary of the Oklahoma Retail Grocers Association when the present Oklahoma Unfair Sales Act was adopted by the Legislature and approved by the Governor?

A. Yes, sir.

Q. And you were Secretary-Manager of the Oklahoma Retail Grocers Association when the constitutionality of that Act was sustained by the Supreme Court in the case of Grocers versus Atwand, is that right?

A. That is correct.

Q. Mr. Bowman, you are familiar with the filing of the Petition in this case, are you not?

A. Yes, sir.

Q. I will direct your attention to Exhibit "B", which sets forth the violations complained of in this Petition, and ask, after directing your attention to that, will ask you to state briefly to his Honor, the facts leading up to the filing of this case?

A. On September the 15th, 1954, Safeway broke with an ad in the Oklahoma City papers, in which they offered quite a number of traffic items at prices below cost as defined in the Unfair Sales Act, and—

DISCUSSION RE STIPULATION

By Mr. Swinford:

Now just a minute; if the Court please, we object to that; [fol. 200] that answer involves a question of law and a conclusion attempted to be stated by the witness. It invades the province of the Court.

By Mr. Miskovsky:

Now if your Honor please, I believe it is stipulated, or might be stipulated, that all the items, except two, set forth in the exhibit referred to were at less than cost to the retailer, as defined in the Oklahoma Unfair Sales Act.

By Mr. Swinford:

No, sir; the stipulation is that the articles contained in Exhibit "B" were sold at the prices set forth in Exhibit "B", and that they cost the amounts as shown in the exhibit set forth in the Cross-Petition.

By Mr. Miskovsky:

Well if your Honor please, the stipulation has heretofore been before your Honor that the prices were as set forth in the exhibit,—that these items were advertised, offered for sale and sold at the prices therein set forth, and that said prices were less than cost to the retailer as defined in [fol. 201] the Oklahoma Unfair Sales Act.

By the Court:

Now as I understood that, that was the fact.

By Mr. Swinford:

That is the difficulty, your Honor, of an oral stipulation. What I want to change is the last phrase; he is virtually saying we violated the law. What we say is, that there was not a six and three-quarters mark-up;—now if they want to stipulate that—

By the Court:

Well I think that will take care of it.

By Mr. Miskovsky:

Was that less than the minimum provided by the Oklahoma Unfair Sales Act, based on your cost, that is, invoice cost or replacement cost, whichever is lower?

By Mr. Swinford:

It is less than six and three-quarters per cent.

By Mr. Miskovsky:

Yes, sir, that is right.

By the Court:

That is the way I understood you, gentlemen; I think [fol. 202] that is what the stipulation was.

By Mr. Miskovsky:

Yes, sir, and that may be stipulated?

By Mr. Swinford:

That is stipulated.

By Mr. Miskovsky:

Very well; thank you.

Q. All right, Mr. Bowman, you may proceed.
A. The first that I knew about that is that when I ar-

rived at my office the phone started ringing, as it usually does when some—

• • • • • • • •

[fol. 203] A. Well, members were calling in and complaining about these ads, about the prices, and such things as that.

• • • • • • • •

[fol. 204] Q. I will ask you the question, as his Honor stated there; was this matter called to your attention, the first ad that broke with the prices less than cost to the retailer under the Oklahoma Unfair Sales Act?

A. It was.

Q. Who was it called to your attention by?

• • • • • • • •

[fol. 205] A. By members of the Association.

Q. You say by "members" of the Association?

A. Yes, sir.

• • • • • • • •

[fol. 206] Q. Mr. Bowman, will you please refer to the exhibit you have in your hand and state if the other exhibits therein which recite advertisements, or advertising for sale, offering for sale and sales by Safeway on different dates and at different places,—was your attention called to those by the members of the Association from the various parts of the State, as indicated thereon?

• • • • • • • •

A. It was.

Q. Now then, what were you doing about the time this first ad broke?

A. When this first ad broke?

Q. Yes,—that was September the 15th, 1954.

• • • • • • • •

[fol. 207] Q. What were the facts about the matter when you got together and filed a suit on,—I believe October the 25th?

A. I called a meeting of the Board of Directors, and went—

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Q. And the suit was filed, is that correct?
A. Yes, that is correct.

[fol. 208] By Mr. Miskovsky:

If your Honor please, we have newspaper advertisements here which we will ask the Reporter to mark as Exhibit "C", all in one group, which are in the order in which they are noted on Exhibit "B" in the Petition, and the identification of these being waived, we offer them in evidence.

By the Court:

You have admitted the identity of those, have you, Mr. Crowe?

By Mr. Crowe:

We waive the identification of them; I don't know just what they are, Judge.

(Mr. Miskovsky submits Exhibit to defense counsel for inspection.)

By Mr. Miskovsky:

Now your Honor please, it is stipulated that only the portion of the page of the newspaper on which the ad appears is offered, being Exhibit "C" through "C-30", and that also the name of the town and the paper, the date, in which the respective ads appeared. Is that right, Mr. Crowe?

By Mr. Crowe:

Yes, no other part of the newspaper except that part [fol. 209] which is offered.

By Mr. Miskovsky:

That is right.

By Mr. Crowe:

And then there are some items circled in red, those, I presume,—

By Mr. Miskovsky:

Yes, I am going to go into that.

By Mr. Crowe:

Well all right.

By Mr. Miskovsky:

And with that explanation, we offer the Exhibit, "C" through "C-30" in evidence.

By the Court:

Very well, Plaintiff's Exhibit "C" through "C-30" will be admitted in evidence.

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[fol. 210] Q. Mr. Bowman, directing your attention to Exhibit "C" through "C-1 to C-30", both inclusive, there are notations and markings on those in red pencil; will you please tell his Honor of those markings were placed on these respective exhibits under your direction and supervision?

A. They were.

Q. And what do they indicate?

A. They indicate the items we suspected of being priced below the provisions of the Unfair Sales Act.

Q. And the items which are set forth in the exhibit attached to the Petition?

A. That is true.

Q. And the Exhibit attached to the Petition was prepared from these advertisements?

A. That is true.

Q. And they contain some of the loss-leader items complained of?

A. That is true.

• • • • • • •

[fol. 211] Q. They contained a number of items which it is admitted were at less than cost to the retailer as defined in the Oklahoma Unfair Sales Act, is that correct?

A. Yes.

Q. Mr. Bowman, was the 15th, the ad, Exhibit "C", the first time that this defendant chain advertised for sale, offered for sale, and sold merchandise for less than cost as defined in the Oklahoma Unfair Sales Act,—will you answer that "yes" or "no"?

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[fol. 212] Q. You may answer, Mr. Bowman.

A. No, it was not the first time.

Q. When was the time previous to this that this defendant chain advertised for sale, offered for sale, and sold merchandise at less than cost as defined in the Oklahoma Unfair Sales Act?

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[fol. 213] Q. You may answer the question, Mr. Bowman.

A. Well this happened on July the 21st, 1954, when Safeway broke with the ad which we suspected them of being in violation of the Unfair Sales Act on a number of traffic items, and I was instructed by the Board of Directors to approach my attorney and file a suit asking for a temporary restraining order and injunction. At the time the suit was filed, Safeway asked for a hearing on the temporary restraining order, and before the time set for this hearing, they took it up to the Federal Court, and—

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Q. Mr. Bowman, I will direct your attention to a news-[fol. 214] paper advertisement, which I will ask the Reporter to mark as Plaintiff's Exhibit "D". (Exhibit marked). Is that the advertisement that you had reference to, on July 21st?

A. It is.

Q. Are the items that were advertised for sale, offered for sale, and sold, at less than cost, as defined in the Oklahoma Unfair Sales Act, indicated thereon?

A. They are.

Q. Was that Exhibit prepared under your direction?

A. These markings here, yes, sir.

By Mr. Miskovsky:

Your Honor please, we offer Plaintiff's Exhibit "D" in evidence.

By Mr. Crowe:

No objection; we know what it is.

By the Court:

Very well, it will be admitted.

* * * * * * *

[fol. 216] By Mr. Miskovsky:

Yes, sir, that is right. Now your Honor please, I will ask counsel if it may be stipulated that pursuant to this advertisement that a proceeding was filed,—a Petition was filed in the District Court of Oklahoma County, and a temporary restraining order issued, and pursuant to hearing on the application for temporary injunction that a temporary injunction was issued by Judge A. P. VanMeter,—or a temporary injunction was ordered by Judge A. P. VanMeter, Judge of the Oklahoma County District Court, and the restraining order remained in full force and effect until the 1st day of September, 1954,—may that be stipulated?

[fol. 217] By Mr. Swinford:

It may not be stipulated; it has been stipulated that there was a previous action, but we object to reference to any action taken in that case and to the manner in which counsel has stated the stipulation. I think it has been agreed to stipulate that there was a previous action filed.

By the Court:

That is what I understand; the Court understands there was a previous action filed.

By Mr. Miskovsky:

Yes, sir, and—

By the Court:

And that a restraining order was issued by Judge VanMeter, but later was dismissed.

By Mr. Miskovsky:

Yes, sir, that is right.

By the Court:

You can agree to that, can't you, Mr. Swinford?

By Mr. Swinford:

We will agree to that, sure.

By Mr. Miskovsky:

All right; now Mr. Swinford, will you waive identifica-[fol. 218] tion of the pleadings in that cause, which was District Court Case No. 133,847,—will you waive identification of the original Petition?—of the original pleadings?

By Mr. Swinford:

We will waive identification of the original pleadings.

By Mr. Miskovsky:

That is what I want to know; that is all I am asking you at this time, will you waive identification of them?

By Mr. Swinford:

Yes, we will.

By Mr. Miskovsky:

Will you waive identification of the temporary restraining order?

By Mr. Swinford:

All of the pleadings in that case, Mr. Miskovsky.

By Mr. Miskovsky:

Very well; now, if your Honor please, for the record, we offer in evidence the Petition filed in said Cause No. 133,848, which is the case of Oklahoma Retail Grocers Association, [fol. 219] a corporation, versus Safeway Stores, wherein the identical parties were involved, together with all of the other pleadings, including the dismissal and the minute entered therein after the hearing on the temporary injunction by Judge A. P. VanMeter.

By Mr. Crowe:

We haven't seen that.

(Mr. Miskovsky hands instruments to Mr. Crowe and Mr. Swinford).

By Mr. Swinford:

To all of which the defendant, Safeway, objects, on the ground that it is incompetent, irrelevant and immaterial; that it unnecessarily encumbers the record, in view of the stipulation which counsel requested and received immediately prior to the identification of the instruments. It adds nothing to the stipulation,—merely serves to encumber the record.

By the Court:

The objection is overruled.

By Mr. Swinford:

Give us an exception.

By Mr. Miskovsky:

Now if your Honor please, we will ask that the whole [fol. 220] court file, which contains all the pleadings in said cause, be marked as Plaintiff's Exhibit "E", and we offer all of the instruments contained in Exhibit "E" in evidence.

By Mr. Swinford.

To which the defendant makes the same objection, if the Court please.

By the Court:

The objection is overruled.

By Mr. Swinford:

Note our exceptions.

[fol. 221] Q. Did you, upon the dismissal of that cause, cause a statement to be made setting forth your reasons for dismissing, or the reasons of the Association for dismissing that cause?

A. Yes, sir, I had—

Q. Well I just want a "yes" or "no" answer to that.

* * * * * * *

A. Yes, I did.

* * * * * * *

Q. Was that statement, or a portion thereof, published in the Daily newspaper of Oklahoma City?

* * * * * * *

[fol. 224] Q. Mr. Bowman, as Secretary-Manager of the Oklahoma Retail Grocers Association, did you cause an analysis to be made of other advertisements of the defendant chain in other places in the State of Oklahoma immediately preceeding July 21st, and following October 25th?

A. I did.

* * * * * * *

Q. You did?

A. I did.

* * * * * * *

Cross examination.

By Mr. Swinford:

Question: Mr. Bowman, you have been the Secretary of the organization for a little over seven years?

[fol. 225] By the Witness:

Answer: That is right.

Q. And you were instrumental, were you,—your organization was instrumental in obtaining passage of the Unfair Sales Act in 1949?

A. That is correct, sir.

Q. You took an active interest in it?

A. That is correct.

Q. One of its principal purposes, or one of the prime pur-

poses of the Oklahoma Retail Grocers Association is to police and enforce that law, is it not?

A. That is one of our activities, among others, yes, sir.

Q. And as such, have you cooperated with the Safeway Officers and employees in that enforcement?

A. I have.

Q. You are familiar with the fact, are you not, that Earl Templeman, who is now Zone Manager, was previously pricemaker in this zone?

A. That is correct.

Q. I think the testimony will show that he left here in about 1951, to take the job at Tulsa, but in any event, prior to that time you and Mr. Templeman associated yourselves together for the purpose of enforcement of this law, didn't you?

[fol. 226] A. We associated ourselves together in working out price difficulties, whether it would be enforcement or not, working those out without prosecutions.

Q. Yes, and subsequent to that time Mr. McCloud succeeded Mr. Templeman as pricemaker, and you have worked in the same close relationship with him, have you not?

A. That is true.

Q. Have you also worked with Mr. Christensen in connection with these matters?

A. Yes, some, I have.

Q. You know all of those three gentlemen rather well, do you not?

A. I do.

Q. And might I ask you if since the restraining order was issued in this case, that you and I haven't worked together in the same capacity?

A. That is true.

Q. That is to say, ever since the stamp issue arose, at least, and just recently, and as Safeway attorneys, I have called you, and you have called me, about successive violations by members of the plaintiff association, is that correct?

A. That is true.

Q. You are aware of the fact, are you not, that our law firm has filed some twenty-six law suits against members [fol. 227] of plaintiff Association, for alleged violations?

A. I am aware that you have filed some,—how many, I don't know.

Q. Exactly, you don't know?

A. No, sir.

Q. The investigations which you conducted, Mr. Bowman, in connection with Safeway prices,—did you also find that there were members of the plaintiff Association who were likewise violating the law?

A. I wasn't checking into those at the time the survey was made; the survey was just made on Safeway's ads.

Q. You do know, though, subsequently, and extending over a period of approximately a year, that Safeway has checked, and those matters have been called to your attention from time to time, and many times by myself, is that correct?

. . . . . .

Q. You do know that, don't you, Mr. Bowman?

A. Well lets have that question again; I didn't quite follow you on that.

[fol. 228] Q. After they made a survey of the practice and prices charged by Safeway, you have learned, principally through telephone conversations which I made to you, that members of the plaintiff Association were themselves violating the law, and you and I, working in connection with each other, have tried to bring about a cessation of those violations without a law suit?

. . . . . .

Q. Isn't that true?

A. We have discussed quite a number of them, some members of the Association, and some you discussed with me that were not members of the Association, calling my attention to violations.

Q. But many of them were,—some of them were members?

A. Yes, sir.

Q. And during that period, of about a year, you and I made an effort to try to bring about a cessation of these violations short of a law suit, didn't you,—made every effort to try to do that?

A. I made contact with everyone that you called my

[fol. 229] attention to, and asked them to get their prices in line.

Q. Yes, sir, and on those occasions, when we weren't able to bring them in line by suggesting it to them, Safeway filed law suits against them, didn't they?

A. You are familiar with that,—I—

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A. Well I don't know, he would be familiar with that, not me.

Q. Are you familiar, Mr. Bowman, of the competitive situation that existed at Enid, Oklahoma prior to September of 1954,—generally familiar with it?

A. I have some knowledge of it.

Q. Yes,—And you know, do you not, there were many merchants in the City of Enid who were not charging the minimum mark-on required by law?

A. I had it reported to me that some of them were too low.

Q. Yes, sir, that is, other than Safeway, your own members?

A. I would say yes.

Q. And the same situation existed at Norman?

[fol. 230] A. Perhaps so, I don't recall definitely.

Q. And Shawnee?

A. I would think so.

Q. And Tulsa?

A. I believe so; the Tulsa Association handles most of that over there, not the State Association.

Q. I would ask you again, Mr. Bowman, how long your friendship and your acquaintenceship with Mr. Christensen and Mr. Templeman and Mr. McCloud has been; you have known them how long?

A. I think I got acquainted with Mr. Christensen probably when he first came to Oklahoma City, I can't state it back that far, and the other boys, I have known for several years, at least, since I have been connected with the Association and during the time they were here.

Q. When did it first come to your attention, Mr. Bowman, that those gentlemen were of the opinion that trading stamps affected a reduction of the sales price?

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[fol. 231] Q. Mr. Bowman, I believe you stated, on direct examination, that you suspected that some of the prices which you observed in these advertisements, which have been identified as Exhibit "C", were below the Statutory minimum?

A. Yes, sir.

Q. That was a suspicion which you entertained?

A. That is right.

Q. Why did you think those prices were below the Statutory minimum?

A. They were called to my attention by various members of the Association. That is usually where I become suspicious, when someone calls me, or a number of them call me, and question them, and then I try to check prices and determine what the cost is, to find out whether or not they are below cost, as I determine it.

Q. You do, Mr. Bowman, keep up with the market on certain traffic items,—are generally familiar with them?

A. I wouldn't say so, no, sir. I depend, primarily, on someone calling my attention to a violation, what they suspect.

[fol. 232] Q. If you find,—well first, let me ask you, are you familiar with the I.G.A. organization?

A. Somewhat, yes.

Q. Just describe that organization, briefly.

A. Well, they are a buying organization, lets say; they have a supply house, Fleming & Company, in Oklahoma City, who supplies the I.G.A. stores. Those stores are owned individually, as I understand it, and they buy principally from that one particular supply house, and they advertise collectively in some of the areas.

Q. Do they advertise collectively in Oklahoma City?

A. Yes, sir.

Q. Do you know how many members I.G.A. has in Oklahoma City and Midwest City, approximately?

A. No, sir, I don't.

Q. It is more than four?

A. I would say so, yes.

Q. And they involve some large stores, which are generally competitive of the market, is that right?

A. I think that is true.

Q. Are you also familiar with the Thrif-T-Wise organization?

A. Somewhat, yes, sir.

Q. Will you explain to us just briefly, what the nature of that organization is?

[fol. 233] A. My interpretation of their organization is that they are a group who own, and maintain, their own warehouse, and they do their principal buying from this supply house, which is owned by the members, and each store is owned individually by the grocer operating the store.

Q. But they have associated themselves, at least for buying purposes, and for advertising purposes, together; is that right?

A. That is right.

Q. How many members do they have in Oklahoma City and Midwest City?

A. I don't know exactly, I think about twelve, perhaps.

Q. About twelve; do you know whether they sell for credit, or for cash?

A. Not definitely; I think they are recognized more as a cash store.

Q. As a cash store; they involve a good many,—perhaps as many as twelve large, what we would call supermarkets, or a self-service, limited-service, organization; is that right?

A. They have nice large stores, I find. The number, again, I don't know definitely, whether there are twelve, or nine.

Q. But you know, Mr. Bowman, in your capacity as Secretary, approximately what percentage of the total food [fol. 234] sales are sold by those two groups, that is, combined,—both Thrif-T-Wise sales volume and the I. G. A.'s sales volume in the City? You know that, don't you?

A. I wouldn't have the least idea.

Q. You wouldn't?

A. No, sir.

Q. You do know that they are important competitors of the low-priced merchants?

. . . . . .

Q. You do know that they are competitive merchants, don't you?

A. I think they are recognized so, yes.

Q. And that their prices, generally, on these traffic items are at the minimum?

A. I wouldn't know whether they are always at the minimum or not.

Q. Well let me change the question; to be perfectly fair, Mr. Bowman, not always, but generally; you won't find any difference in the price charged by the—

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[fol. 235] Q. —from your observance of this area, Mr. Bowman, you won't find any difference between the price charged for such staple articles as sugar, as between Thrif-T-Wise group, that is, in their stores individually, say in Mr. Miskovsky's store, and in the I.G.A. group, would you?

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[fol. 236] A. Well let me have that question clearly, so that I can give you an answer as to whether or not I know it.

Q. Yes,—Mr. Bowman, you recognize the termnology "traffic items", do you not?

A. Yes.

Q. And you know that they represent those items which the housewife buys day after day, and are historically sold at the retail level for a minimum mark-up? Now—

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[fol. 237] Q. Have you got the question in mind?

A. I follow you on it now, yes.

Q. All right, you are familiar with those items?

A. That is right.

Q. And you know that those are items which merchants generally feature in their week-end ads, don't you?

A. That is right.

Q. And that has been going on since you have any recollection of the grocery business, hasn't it?

A. That is true.

Q. All right, now, I am asking you whether, in your observance of the grocery market in this vicinity, you have,

week-in and week-out, month-in and month-out, in the last two years, noticed any appreciable difference between the prices charged by the Thrif-T-Wise group, the I.G.A. group, Safeway Stores, and Humpty Dumpty on those prime traffic items?

A. Once again, I will have to answer it this way; that I seldom pay attention to prices except when it is called to my attention by someone that there may be a violation, and I have not,—well, through none of those papers I cannot say "yes" or "no" to it.

Q. I am asking you if you have observed that there is any appreciable difference,—do you think there is a big difference?

A. No, I just say I don't think there is, but I don't know.

[fol. 238] Q. You don't think there is?

A. Well I don't know.

Q. Mr. Bowman, I hand you what has been identified as Plaintiff's Exhibit "C", which I believe you have described as the September 15th advertisement which appeared in the Daily Oklahoman, that is to say, you have identified that portion of the sheet which includes Safeway's ad. I call your attention to the fact that the advertisement itself states, "Again Safeway reduces prices. In addition to the hundreds of proces that Safeway has reduced during the past few weeks, Safeway has now—"

. . . . . .

Q. "—Safeway has now lowered prices on many staple items below the current established retail prices of merchants who give trading stamps". Now, your particular attention to this statement; "The prices on many of the items listed in this ad have been lowered sufficiently to offset the value of Double Trading Stamps on Wednes-

[fol. 239] days". Now you are familiar with that portion of the ad?

A. That is right, I am.

Q. Now isn't that the only purpose stated in that ad for the ad itself?

. . . . . .

Q. One more question, Mr. Bowman; you knew, from your conversations with Mr. Christensen and Mr. Temple-

man and Mr. McCloud, that that expression in there, which I have just read to you, was the sole and only purpose for which they reduced those prices?

. . . . . .

[fol. 243] HENRY KAMP, being called as a witness in behalf of the Plaintiff herein, after being first duly sworn upon oath to testify the truth, the whole truth and nothing but the truth, upon interrogation by counsel, testified as follows:

Direct examination.

By Mr. Miskovsky:

Question: For the record, you are Mr. Henry Kamp?

By the Witness:

Answer: Yes, sir.

Q. Mr. Kamp, you are a resident of Oklahoma City, are you not?
A. Yes, sir.
Q. And have been how long?
A. Since 1910.
Q. What is your—what does your family consist of?
A. Five sons and one daughter.
Q. Are you a grocer?
A. I am.
Q. And you have been a grocer, how long, Mr. Kamp?
A. Since 1910.
[fol. 244] Q. Now speak up, so that his Honor can hear you. Where did you come from, to Oklahoma City?
A. From St. Louis.
Q. Are you a member of the Oklahoma Retail Grocers Association?
A. Yes, sir, I am.
Q. How long have you been a member of the Oklahoma Retail Grocers Association?
A. Since the organization started.
Q. When was that?

A. In 1938, I think.

Q. Are you a member of the Oklahoma City Retail Grocers Association?

A. Yes, sir, I am.

Q. How long have you been a member of that Association?

A. The same time.

Q. Are you an Officer or Director in either of those organizations?

A. I am the Treasurer.

Q. How long have you been Treasurer of the Oklahoma City organization?

A. Since 1938, since it started.

Q. How long have you been treasurer of the Oklahoma organization, the State organization?

A. The same time.

[fol. 245] Q. Are you Treasurer at this time?

A. Yes, up until a week ago.

Q. When you had the State-wide meeting here in the auditorium, is that right?

A. Yes, I resigned and they elected my son.

Q. Yes, sir, what is his name, Henry?

A. Walter Kamp.

Q. Yes, sir, he is in business out there with you, is that right?

A. Yes, sir.

Q. Your store is sort of a family store, is that right?

A. That is exactly what it is.

Q. How many of your children are engaged in the prosecution of that business?

A. Why four of my sons, and one of my brother's sons; we have got two brothers there.

Q. You are just a one store operator, you are not a chain operator, are you?

A. No, I am not.

Q. Mr. Kamp, in the conduct of your business, you don't give trading stamps, do you?

A. I do not.

Q. Do you operate for cash, or credit, or both?

A. Credit and cash.

Q. Mr. Kamp, were you Treasurer of the Association

[fol. 246] when this law was enacted and approved by the Governor?

A. I was.

Q. You were Treasurer of the Association when it was approved by the Supreme Court of Oklahoma, is that right?

A. I was, yes, sir.

Q. You were a member of the Board of Directors when action was first taken, as stipulated here, or as shown here in this case, on the 21st of July, is that right?

A. That is right.

Q. And also on the 25th day of October, 1955?

A. I was.

By the Court:

Don't you mean 1954?

By Mr. Miskovsky:

1954, yes.

Q. Mr. Kamp, when the defendant chain first advertised, offered for sale and sold merchandise as complained of herein, on the 21st day of July, 1954, did you meet those prices complained of?

A. I did not.

• • • • • • •

[fol. 247] Q. When the second suit was filed and the prices advertised, offered for sale and sold, complained of in the Petition, in Oklahoma City and other places, did you meet any of those prices in the conduct of your business?

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Q. You may answer the question, Mr. Kamp; did you meet any of those prices?

A. I did not.

Q. You continued to conduct your business as you had before, is that right?

A. I have, yes, sir.

Q. Were your sales below cost,—your sales?

[fol. 248] A. My sales?

Q. Yes?

A. No, they were not below cost.

Q. They were in line with the law?

A. In line with the minimum price law, yes.

Q. Now Mr. Kamp, having been a grocer, and being a grocer, you concurred with the Association in bringing this suit to stop violations by the Safeway chain, did you not?

. . . . . .

A. I went along with it; that was the salvation of the independent retailers.

Q. Yes, sir, now—

. . . . . .

[fol. 249] Q. Mr. Kamp, tell his Honor what would have happened had you not restrained this chain from violating the law?

. . . . . .

[fol. 251] Q. Mr. Kamp, what were the actual results of the defendant's advertisements, offers to sell, and sales, complained of in this case?

. . . . . .

A. Do you mean as of September—

. . . . . .

[fol. 252] Q. All right, Mr. Kamp, did you, of your own personal knowledge, observe anything that happened as a result of these advertisements to your business, and business of others? Now you can answer that "yes" or "no".

A. Yes, I did.

Q. Tell his Honor what that was?

A. Why I found in my business that right after this started,—not only the Safeway started cutting their prices,—but what I mean is, Humpty Dumpty, and Standard, and other independent stores started to cutting their prices, and when I didn't follow their prices, because I didn't want to go against the law, but I figured on that I had a lot of contention with the smaller merchants and medium sized merchants coming and asking me what—

. . . . . .

[fol. 253] A. Well, I don't know exactly if it would hurt my business or not, but I expect it would, in the long-run, but of course after you go along for a month or so you can

tell it, the way you do a credit business along with your cash business, but I know it would be, because I always followed the line, whether I meet prices or not. I suspected—

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A. I observed that it started already a price war in the stores, and it would have gone on—

• • • • • • •

[fol. 254] Q. Go ahead, Mr. Kamp.

A. I observed that it started a price war, and if it would have gone on it would have been very detrimental to the independent,—or to a lot of the other grocery stores,—all of the grocery stores in the City, because we all know that loss-leader is the biggest advertisement, the cheapest advertisement anybody can get, advertising loss-leaders.

• • • • • • •

[fol. 255] Q. All right, go ahead, Mr. Kamp.

A. And as a member of the Merchants Retail Association of the City, a good many of them called me and asked me about it, and—

• • • • • • •

Q. Well, you received complaints from other merchants?

• • • • • • •

Q. Go ahead, Mr. Kamp.

A. Could I answer that I received complaints, and questions, what the Association was going to do about it?

Q. Yes, go ahead, Mr. Kamp.

A. What the Association was going to do about bringing this suit against the Safeway, or anybody else, because we not only brought suits against Safeway, but also against about a half dozen or more independents,—stores,—to observe our laws like it was given to us in the minimum price law.

• • • • • • •

[fol. 256] Q. Go ahead, Mr. Kamp; tell his Honor,—he wants to know what the result was?

A. And the only thing we could do was to file this suit against the Safeway, in order to protect the smaller,

larger, and medium sized merchants, because none of them have any reserve built up, none of them like the Safeway, so that they can call on the stockholders to subsidize it.

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A. And we had to do it in order to protect our smaller [fol. 257] stores.

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Q. Now Mr. Kamp, as a grocer with forty-five years experience, will you please tell his Honor what, in your opinion, the effect of a protracted, or continuation of this, without restraint, what effect it would have had on the grocery volume in Oklahoma City?

• • • • • • •

[fol. 258] Q. Go ahead, Mr. Kamp.

• • • • • • •

A. The Safeway stores, and the larger stores, Humpty Dumpty, and independent stores, would be allowed to go on with the price war,—if they would be allowed to go on with their price war, it would have been only a year's time until they would have the independent stores in Oklahoma City out of business,—that is my honest opinion.

Q. And who would wind up with the business?

A. Either the chain stores or the larger independent stores.

Q. Or both?

A. Or both, yes, sir.

[fol. 259] Q. Now then, was Safeway's price cutting on these selected traffic items particularly hard on the little fellows?

A. Yes, especially because they have these items where they can go buy them, because they have got the room to stock lots of merchandise, and the little fellows don't have the room to stock it. They only live on their bread, milk, sugar, and crisco, and they would have been absolutely out of business when it was over.

• • • • • • •

Cross examination.

By Mr. Swinford:

Question: Mr. Kamp, you have been in business in Oklahoma City forty-five years?

By the Witness:

Answer: That is right.

Q. And your father, before you?
A. No, he was not.
Q. How long have you been in your present location?
A. Since 1910.
Q. Since 1910; and the way I understand it, that location is right off of Classen Bulovard?
A. 25th and Classen.
Q. And there was a time when that location was in the [fol. 260] center of what we commonly call the "silk stocking" group of Oklahoma City?
A. Not at that time; it might have been later on.
Q. A little later,—well you have a fine large group of,—of course those folks belong to the higher income group, don't they?
A. Well, not them years, because it is only the last ten years that we have got a lot of high income; they were poorer than most of us was.
Q. Your customers, be it high or low, have generally been those people who were the well-to-do people in the City, haven't they?
A. More or less, yes, sir.
Q. Yes, you have not appealed to the working man.
A. I have, and I do right now.
Q. You do?
A. Yes, because my price is not only for the rich, but for the poor as well. I try to keep my prices in line with all the rest of them.
Q. Are you competitive with Thrif-T-Wise group on traffic items?
A. Yes, sir, I am.
Q. You are,—are you competitive with them on every item?

A. No, I wouldn't say that.

[fol. 261] Q. Just the traffic items?

A. On the traffic items, I am.

Q. Why do you meet their prices on traffic items and not on other items?

A. Why,—because you have to go along somewhere,—you couldn't,—traffic items and the other items are not outlined to speak of, but then I figure on making a profit on everything I sell.

Q. Well I don't mean to inquire into your outlines, but I am just asking you why you meet the Thrif-T-Wise price on traffic items and you don't meet their prices on other items?

A. I don't know those Thrif-T-Wise items, but I know the traffic items,—I know what they are, and I meet their prices.

Q. You meet their prices on those?

A. Yes, sir.

Q. But you don't meet their prices on other items?

A. I don't know, I never checked their stock, because they don't advertise their meat; I don't know what they charge.

Q. Well, Mr. Kamp, as a matter of fact you have to meet the prices on traffic items in order to stay in business, don't you?

A. Well that is only a very small portion of it, if you will figure on it.

[fol. 262] Q. Well you are not answering my question, Mr. Kamp; I say you have to meet their prices on traffic items, don't you?

A. I do that, yes, sir.

Q. You have to do that?

A. Yes, sir.

Q. Because those items are the items which are featured in the week-end ads, aren't they?

A. That is more or less a custom to do it, yes, sir.

Q. That is right, and it is not so important that you meet competition on the other items that are not so frequently advertised, is it?

A. I don't know; I don't know what about those. They don't advertise them,—only just the traffic items.

Q. All right, Mr. Kamp, what portion of your business is credit business?

A. About sixty per cent.

Q. And about forty per cent cash?

A. Yes, sir.

Q. And you don't give stamps?

A. No, I don't.

Q. Why?

A. Why,—because I am against it,—before I came to Oklahoma even, from St. Louis. I worked in a store in St. Louis where the stores had to give three kinds of stamps [fol. 263] in order to be competitive, and I made up my mind I'd never give stamps.

Q. Why are you against them, Mr. Kamp?

A. Because it is an extra item on the merchants,—it is a cost of doing business.

Q. That is an additional cost of merchandise,—it decreases the profit—

A. Sure it does.

Q. —and it increases what you give to the customer?

A. That is right.

Q. And if stamps are worth $2.50 a book why then the customer is buying the groceries for less than they would otherwise?

. . . . . .

[fol. 264] Q. Mr. Kamp, either your counsel has referred to the prospect of a price war,—I take it that you were stating that you felt that when Safeway reduced its prices to meet the prices of the stamp merchants, that that might precipitate a price war,—am I correct?

. . . . . .

Q. Am I correct in my assertion?

A. Yes, sir, you are.

Q. How do you start a price war?

A. Why one merchant sells an item, like a sack of sugar, for ninety-seven cents, and the other merchant will come down to ninety-five, and then they will just go back and forth again until it is maybe sold for seventy-five, and it is quite a harvest for the consumer.

[fol. 265] Q. That is, it stair-steps?

A. It stair-steps, that is right.

Q. One merchant will establish ninety-five cents as the price, and then another one will go to ninety-four, and then he will come down to ninety-three,—

A. That is exactly right.

Q. —and then some wise-eager will take a double jump and he will go clear to ninety,—

A. That is right.

Q. —and that is what starts a price war, is it not?

A. Yes.

Q. All right, you have been in this business long enough to know is the cause of a price war?

A. I sure have.

Q. All right, Mr. Kamp; now suppose, for some reason or another, you can buy, giant size detergent, we will say, so that you can afford to sell it for seventy-two cents, we will say,—

A. Uh-hu—

Q. —and your competitors don't go to seventy-one cents, but they just come down to seventy-two cents, just where you are,—go straight across the board,—everybody goes down to seventy-two cents; that happens sometimes, doesn't it?

[fol. 266] A. Yes, it does.

Q. Now when everybody gets on the same level as to price, that won't cause a price war?

A. No, it won't.

Q. It will just level it off?

A. That is right.

Q. If you give the same values to your customers that your competitor is giving them, then there is no price war?

A. No.

Q. And there is no difficulty?

A. No.

Q. And that is a proper business practice, isn't it?

A. Yes, that is the way it ought to be.

Q. Yes,—now you just testified that that is what you do, —you bring your traffic items down on an equality?

A. Yes, sir, on a price that everybody is alike.

Q. And you approve of that?

A. I approve of that, yes, because we know there are certain items that have a small mark-up.

Q. Yes, but in order to stay in business you have to reduce the price of it,—you have to reduce them down to that?

A. We have to reduce them.

Q. And if everybody else is the same price, nobody is [fol. 267] hurt, are they?

A. That is right.

Q. Now supposing everybody charges seventy-two cents across the board for that giant Tide, but some merchant comes along and, in addition to selling them Tide for seventy-two cents, he gives them a package of chewing gum with that Tide, worth a nickle,—has he lowered his price?

* * * * * * *

[fol. 269] DEFENDANT'S CASE

By Mr. Swinford:

The defendant will call, as its first witness, Mr. Kamp.

HENRY KAMP, having been heretofore called, sworn and testified herein as a witness in behalf of plaintiff, now being called as a witness in behalf of defendant, upon interrogation by counsel, testified as follows:

Direct examination.

By Mr. Swinford:

Question: Mr. Kamp, you have previously been sworn, and you are the same Mr. Kamp who was previously on the stand?

[fol. 270] By the Witness:

Answer: Yes, sir.

* * * * * * *

Q. Are you familiar with the S & H Green Trading Stamps?

A. All I know is what the rest of them do about them, but I never was offered any of them, and never intend to buy any.

Q. I understand the last part of your answer,—what was the first part of your answer?

A. I don't know much about them, only what I see, what I have observed,—those that have that same trading stamp.

Q. And what you observed, you don't like?

A. I don't like it, no.

[fol. 271] Q. Do you know, approximately, Mr. Kamp, what the value of th stamp is?

A. Oh, somebody said two and one-half cents.

• • • • • • •

A. About two and one-half cents, I think.

Q. About two and one-half cents?

• • • • • • •

Q. On the dollar?

A. On the dollar, yes.

• • • • • • •

Q. Well Mr. Kamp, what I wanted to ask you,—going [fol. 272] back to our illustration, the illustration that I used when you were on the stand here before, that is, you have all these merchants, all of whom are competitors with each other,—I.G.A., Thrif-T-Wise, Safeway, Humpty Dumpty, and Kamp Brothers, all selling Tide, jiant size, for seventy-two cents, because somebody brought it down there as a traffic item, and everybody, for the matter of self-preservation, had to meet the price.

Now, my next question to you is this: suppose that one of the merchants, in addition to selling his customers Tide for seventy-two cents, also gives a package of gum, which we will say is worth a nickel,—merchants sometimes give premiums of that kind, don't they?

A. Yah, as long as I have been in business I have always known that somebody else always gives something away, you know, some kind of a gimmick, and I believe that is poor business on their part, because I believe if they operate their business in a fair way, honest to the customer, they would not need to do that in order to keep him in business.

Q. Now if he does do that, however, it costs him more money, to the extent that he has paid for the chewing gum, doesn't it,—it costs the merchant that?

A. Well more than likely it would.

Q. Yes, and correspondingly, the customer receives not only giant Tide,—

* * * * * * *

[fol. 273] Q. Well then my question is, Mr. Kamp, whether it not only cost the merchant that much more, but the customer receives two things, doesn't he; he receives the Tide, and the chewing gum?

A. Yes, sir.

Q. Now lets assume, if you will, please sir, that the chewing gum is worth a nickel; you pay seventy-one cents for both the Tide and the chewing gum?

A. Yes, sir.

Q. What has that Tide cost you?

* * * * * * *

[fol. 274] Q. All right; Mr. Kamp,—

A. Well I believe he would be going against the law.

Q. Yes, sir, and by the same token, if he gave the stamp, regardless of its value, the customer would still receive more than he receives in a non-stamp store, doesn't he?

A. He does, in a way, yes, sir.

Q. Yes, sir, and regardless of how much the value of the stamp is,—the extent of the value of the stamp,—if you deduct that from the sales price, that is what the merchandise costs you, isn't it?

By Mr. Miskovsky:

Now just a minute,—if your Honor please, we object to the form of the question,—it is leading and suggestive, and calling for a legal conclusion of this witness.

[fol. 275] By the Court:

Objection overruled.

A. Well it looks like it, yes, sir.

Q. Yes,—it reduces the Tide to something other than seventy-two cents?

A. It would, yes, sir.

Q. Yes,—now, I don't know who your competitor is, Mr. Kamp, and I am not going to ask; but let us assume that you do have a principal competitor. Let us suppose that

your competitor does that, then, what you told us before, that in business usually you would normally reduce your price to meet the value that that stamp merchant was giving, wouldn't you?

A. Why I wouldn't call it a reduction in price if anybody gives stamps, because these folks that have given stamps have been giving them so long that they get used to them. It is whatever they want to call it, but I don't call it a reduction in price.

Q. Well that is not the question; I asked you—

. . . . . .

Q. Now Mr. Kamp, how would you meet,—normally, how [fol. 276] would you meet that type of competition,—suppose that your customers thought that they could secure a greater value at the stamp stores than they could secure at your store,—how would you go about meeting that competition?

A. Why I would be ever so more trying to treat them well, and keep the prices down as much as I can, honest,—honesty, and so forth.

Q. And as you would off-set it by the superior character of your store, your equipment—

A. Yes, sir, and friendliness.

Q. —and friendliness,—

A. Yes, sir.

Q. And another proper method of doing it would be lowering your prices, wouldn't it,—equalize it?

A. Well I don't think they would think much more of me if I did, and I don't want to go against the law,—I wouldn't go against the law.

Q. Yes, but if it didn't violate the law, then that would be the proper method, wouldn't it?

A. That would be the proper method, yes, sir.

Q. All right, that is the thing I am trying to make clear, so that I understand you perfectly, that except for the law, the proper way—

. . . . . .

[fol. 277] Q. Mr. Kamp, do you remember when grocery merchants in this City first started using trading stamps?

A. Why they started using them in 1911.

Q. In 1911?

A. Yes, sir.

Q. How long did that last?

A. Only two or three years. Right next to me they had them, and I refused to buy them.

Q. I see,—and when did they start again, after they stopped in 1913?

A. Oh, I don't remember, it must have been ten or twelve years ago, something like that,—I don't know for sure.

Q. Well let me ask you this, did they use them during the war?

A. I don't think so.

Q. They would just sell you the merchandise then, I think—they didn't give stamps.

A. Well I don't think they did.

[fol. 278] Q. So it was sometime subsequent to the cessation of the last war?

A. Yes, sir.

Q. And can you tell us approximately when it was?

A. No, I really don't know.

Q. Well can you tell us when they started giving double stamps on Wednesdays?

A. Not until about two or three years ago. Two or three years ago one merchant, I believe, gave the stamps already, but the dry goods companies gave double stamps, but not a grocery merchant.

Q. Now who started giving double stamps, Mr. Kamp, what grocery?

• • • • • • •

A. Well I don't know for sure.

Q. Now as an expert in this field of grocery merchants, do you have an opinion as to whether there is any difference as between double stamps and single stamps?

A. Not any difference, except the more they give out the more it costs them to do it.

• • • • • • •

Cross examination.

[fol. 279] By Mr. Miskovsky:

Question: Mr. Kamp, just one thing; you are not saying to the Court, based on counsel's testimony there, that they didn't give,—some merchants didn't give stamps during the war,—they may or may not have, is that right?

By the Witness:

Answer: I just don't know for sure; I don't know, no, sir.

Q. And how many gave them, and where they gave them, you don't know?

A. No, I don't know.

* * * * * * *

[fol. 280] Paul J. McCarty, being called as a witness in behalf of the defendant herein, after being first duly sworn upon oath to testify the truth, the whole truth and nothing but the truth, upon interrogation by counsel, testified as follows:

[fol. 281] Direct examination.

By Mr. Swinford:

Question: State your name, please sir?

By the Witness:

Answer: Paul J. McCarty.

Q. By whom are you employed, Mr. McCarty?
A. By The Speery-Hutchinson Company.
Q. Sometimes known as The Green Stamp Company?
A. Yes, sir,—right.
Q. And you are in Oklahoma City?
A. Yes, sir.
Q. How long have you been employed by them?
A. Twenty-three years.
Q. In what capacity?

A. Well I have been everywhere from stock clerk to now,—State Manager.

Q. How long have you been State Manager?

A. Two years.

Q. Is your home here in Oklahoma City?

A. Yes, sir.

Q. And as such employee of the Speery and Hutchinson Company, do you have charge, and have you, for many years, the negotiation and making of contracts between your employer, S & H and the retailers who subscribe to the use of trading stamps?

A. I do.

[fol. 282] Q. Can you tell me, Mr. McCarty, in modern times, or if you prefer to go back to its origin, how long has it been that your stamps have been distributed by retailers in the grocery business in Oklahoma?

A. Ever since I have been with the Company.

Q. And you have been here how long?

A. Twenty-three years.

Q. Were they used during the war, the last war?

A. Yes, sir.

Q. By whom?

A. By independent grocery stores.

Q. Will you name them, please?

A. Colvert's Grocery; Eudy's Grocery; Speed's,—I believe that is all I can recall off-hand.

Q. Those three,—and I am not familiar with Colvert's, where is that store?

A. It was at 2803 Northwest 12th; they sold out to Lonie Sage,—oh, a couple years ago.

Q. How long did they handle stamps?

A. From 1926 until they sold out.

Q. What was the other one, Union?

A. Eudy's—E U D Y.

Q. Where was that store?

A. 1501 Northwest First.

Q. And they have used stamps how long?

[fol. 283] A. Oh, they used them, off and on, I would say for ten years. They would discontinue using them for a while, and then they came back.

Q. Well I understood that, from Mr. Speed's testimony,

that he started using stamps sometime in the latter part of the year of 1951; is that in error?

A. That was when he started again. He had used them prior to that time.

Q. Oh, I misunderstood the previous answer; will you tell us then when he started and stopped, and started again?

A. He started in 1942 and discontinued in '45, I believe, or '46, and started again in '52.

Q. So from '46 to '52, he didn't use stamps?

A. That is right.

Q. And the only two retailers in this area that you know of that were using your stamps were the two grocers,—are the two grocers that you just mentioned, is that right?

A. That is right.

Q. All right, so that it is proper to say, is it not, that the trading stamps at the retail level in the grocery business in this area, prior to 1952, was no particular problem,—that is, there weren't very many using them?

A. That is right.

Q. All right, when did the grocery merchants in this area start to use stamps again, if you will let me use that phrase?

[fol. 284] A. Well, they never did stop.

Q. I understand that you had the continuity that you speak of, of the two grocerymen, and I am talking about on any substantial scale?

A. Well, the Thrif-T-Wise group started in 1952.

Q. In 1952; do you remember what month, Mr. McCarty?

A. I believe the first one was,—we opened in Norman in June, of '52, and opened the Oklahoma City account in September,—or November,—November, I guess it was.

Q. The latter part of 1952?

A. Right.

Q. Now how many merchants did that encompass?

A. In Oklahoma City, or throughout the State?

Q. In Oklahoma City?

A. Nine.

Q. Nine; can you name them, please sir?

A. I believe I can; we have Al Childer's Thrif-T-Wise; we have Miskovsky Thrif-T-Wise; we have Waters Thrif-T-Wise; We have Scott's No. 1 and 2, and we have Carson's No. 1 and 2, and Greenhaw's.

Q. And they started in the latter part of 1952; when did the I.G.A. merchants start using your stamps?

A. We don't have I.G.A. in the group; we have some independent I.G.A. stores,—I mean throughout the State, that have used them all the time.

[fol. 285] Q. Well if I can confine your testimony for a moment please, to the Oklahoma City area,—can you tell me which I.G.A. merchants use your stamps in this area?

A. Speed does.

Q. Is he the only one?

A. He is the only one.

Q. Stockton does not?

A. No, sir.

Q. What kind of a stamp does he handle?

A. He has his own; it is called C & S.

Q. And are any of the other I.G.A. merchants using any other form of trading stamp or cash register receipts?

A. Yes, sir.

Q. Name them, please?

A. They are using Chip Stamps.

Q. What merchants?

A. What merchants?

Q. Yes, sir.

A. Well I don't know if I can name them all, but Watkins, —Allan McArthur does,—and Kimberling,—and one on 39th Street,—I can't recall the name,—Norman's I.G.A., yes, I believe that is the way it goes.

Q. Would you know when they started using the chip stamps?

A. No, sir.

[fol. 286] Q. Do you know when Mr. Stockton started to using the C & S stamp?

A. No, sir.

Q. Are you generally familiar with the C & S and the chip stamp?

A. Generally, yes.

Q. Do they, in your opinion, operate in substantially the same way as the S & H stamp operates?

A. No, sir.

Q. Well would you tell us, please sir, what the distinguishing features are?

A. Well, we buy merchandise and redeem stamps with merchandise that we have purchased. They redeem merchandise for merchandise that the operator purchases.

Q. That is to say that the merchant himself supplies the premiums out of his stock of merchandise?

A. That is right.

Q. I see,—that is true of both the C & S and Chip stamp?

A. I believe it is,—I wouldn't say for sure about it,—I wouldn't say for sure about the C & S.

Q. Are you familiar with the use, by any retail merchants in this area, of cash register receipts?

A. I was; I think one of the principle ones that was using them is not using them now; he has his own stamps, [fol. 287] Whittaker,—he has a stamp called Whittaker stamp now. Prior to that he was using cash register receipts.

Q. I see; now how did the cash register receipt operate, if you know?

A. Well, they just save the cash register receipts and total them up and bring them in and redeem them for merchandise.

Q. Merchandise taken out of his normal inventory?

A. I think so, yes, sir.

Q. So the distinguishing feature between the cash register receipt, C & S and Chip stamp, and the S & H stamp that you represent is, that in the former, merchants supply the premium and redeem the stamps themselves, whereas in the case of the S & H the S & H stamp Company furnishes the premiums; am I correct?

* * * * * * *

Q. Is that a fair statement regarding it?

A. Yes, sir.

Q. Can you tell us, Mr. McCarty, what, in your opinion, [fol. 288] the value of the stamp is to the customer, monotary value,—I speak now of the S & H stamp?

A. It is approximately $3.00 book value.

Q. Approximately $3.00 a book, and a book represents how much in purchases?

A. $120.00 worth.

Q. And the stamps are distributed in what proportion?

A. They give one on each ten cent purchase.

Q. So that the housewife, when she spends $120.00, she receives a complete book of stamps, is that right?

A. That is right.

Q. And that is worth approximately $3.00 in merchandise?

A. That is right.

Q. The $3.00 value is computed how?

A. Rephrase that please; I didn't understand the question.

Q. I say, how do you compute the $3.00 value? The $3.00 value of the book of stamps that you just testified to?

A. Well that is based on the retail value of an item that you would get for one book of stamps.

* * * * * * *

[fol. 291] Q. Mr. McCarty, I hand you what is identified in the Answer of the plaintiff, Speed, to the Cross-Petition of the Defendant, Safeway, as Exhibit "C",—

* * * * * * *

Q. —and ask you to state whether or not that is the catalogue you referred to as used by your Company?

A. It is.

Q. And that catalogue merely contains the description of the premiums that you agree to redeem for the stamps, in accordance with that catalogue, that is to say, the number of stamps required to obtain any premium as shown in that catalogue?

A. That is right.

Q. Now my point is, are all of those premiums of equal value? In terms of stamps?

A. Approximately, yes.

Q. Approximately, but they are not all of equal value, are they?

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[fol. 292] Q. It takes more stamps to obtain the same dollar value on some item than it does another, doesn't it?

* * * * * * *

Q. For instance, if you turn over to the check register, which normally sells for $29.50, it takes what, seven and

one-fourth books, doesn't it,—is that the way you compute it, Mr. McCarty?

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[fol. 293] Q. All right, Mr. McCarty, refer to the Shick razor?

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Q. Mr. McCarty, did you find the Shick razor?
A. No, I haven't found it yet,—yes, here it is.
Q. What item is that in the catalogue?
A. Item "Z".
Q. What page?
A. Page 15.
Q. Is that a fair trade item?
[fol. 294] A. I wouldn't know.
Q. What is the retail price on that razor?—the dollar price?

• • • • • • •

Q. Do you know the approximate value of that razor?
A. Yes, sir.
Q. How much?
A. $23.50.
Q. And how many books of stamps does it take to get it?
A. Seven books.
Q. So if you would divide seven into $23.50, you would get the dollar value of the stamps, would you not?
A. That is right.
[fol. 295] Q. Now, my point is, that the value on different premiums will vary to some extent, will they not?
A. To some extent, yes, sir.
Q. Have you ever made a computation of the value of the stamps, yourself?
A. Why sure I have.
Q. You have?
A. Yes, sir.
Q. Safeway has also made a computation of those values, and I hand you what has been marked as Plaintiff's Exhibit "I", and call your attention to the fact that in computing these values the defendant, Safeway, took, not one retail price, but several, in order to determine a mean average of values. The first column shows the fair trade

price of the item as shown in the catalogue, the second column, the mail order price, and the third column, the department store price, and the fourth column, the discount-house price. I further call your attention to the conclusions at the end of the survey, or computations,—

. . . . . .

[fol. 296] Q. Mr. McCarty, on the last page, I call your attention to the fact that in our computation of the value of the S & H stamps, we arrived at these results, that on a fair trade basis it will be worth $3.38, and—

. . . . . .

[fol. 297]

Q. Mr. McCarty, will you take the exhibit and scan the last figures, dollar figures and percentages, in the last four columns, and tell the Court whether or not those values, shown thereon, agree with your computation of the value of the stamps?

. . . . . .

By Mr. Miskovsky:

Question: Mr. McCarty, did you have anything to do with the preparation of this Exhibit?

By the Witness:

Answer: No, sir.

Q. Do you know anything about the facts and circumstances that went into it?

A. No, sir.

Q. And you cannot identify it?

A. No, sir.

Q. And you can't verify the authenticity of any of [fol. 298] the conclusions therein?

A. I cannot.

By Mr. Miskovsky:

All right, we object to any further questioning about it, your Honor, until some proper predicate is laid.

By Mr. Swinford:

Your Honor, he has made a computation; all we want to know is whether his computation compares with this.

By the Court:

If he knows, he can answer the question.

By the Witness:

Answer: I have never made any computation on these items. You asked me if I had ever made any computation, and I said I had.

By Mr. Miskovsky:

Question: Well what have you computed, if you haven't computed these items?

A. Well just several items, for my own information. In other words, we want to know any time we add a premium in our line whether it is a good value or not,—our New York office wants to know if it is a good value. So sometimes we have occasion to investigate one to see if it is in line.

Q. Well then what you testified to is not what the mean [fol. 299] average of those stamps is, but just the value of some of the premiums, is that right?

A. That is right.

Q. I see,—and if Safeway computed its value at two point eight, (2.8) you are not in a position to say that that is wrong, are you?

. . . . . .

By the Court:

It is argumentative; it will be sustained.

Q. Mr. McCarty, when did the double stamp program start in Oklahoma City, on the grocery level?

A. Well it has always been in effect.

Q. Well, I am talking about the modern era, which I believe we fixed as the latter part of 1952; is that correct?

. . . . . .

Q. Mr. McCarty, the testimony before was that there [fol. 300] merchants who probably continuously have given stamps. Sometime in the latter part of 1952 the Thrif-T-Wise group, composed of approximately nine merchants, and the I.G.A. group, composed of one merchant, started giving S & H stamps, after a long cessation of stamp activity in the grocery business. Now,—

• • • • • • •

A. It was in effect with Humpty Dumpty when they gave stamps.

Q. Oh, no,—I am talking about S & H stamps; you had two merchants only, giving them prior to October, '52.

• • • • • • •

[fol. 301]

A. Well Humpty Dumpty gave them from '36 to '42.

Q. Until '42, yes, but I am talking about immediately prior to 1952?

A. Well there were more than those two, I am sure. My job was to get out and sell anybody I could, and we had—

Q. Well to be perfectly fair, Mr. McCarty, most of them stopped giving stamps during the war, didn't they?

A. That is right.

Q. All right, and the only two that you remember that [fol. 302] continued through that war period were the two mentioned that you just mentioned a bit ago?

A. Speed, also.

Q. Speed, also; when did he start?

A. In '42.

Q. And he gave them from '42 to the present time, continuously?

A. No, sir, up until '45, and then he started back in '52.

Q. All right, he stopped in 1945,—but I am talking about when he started the second time, in 1952. Now, when, after those merchants took on stamps in 1952, did they start giving double stamps on Wednesdays?

A. Speed started in the Fall of '52, and the Thrif-T-Wise in the Fall of '53.

Q. A year later?

A. Right.

Q. All right, now was that with your consent and acquesence, or the consent and acquesence of your Company?

A. Yes, sir.

Q. It was?

A. Yes, sir.

Q. And that lasted how long?

A. Well, until they were stopped by court,—no, until '54.

[fol. 303] Q. Until 1954,—didn't it actually go until March 14, 1955?

A. It possibly did, yes.

Q. And how was it stopped, when they stopped it?

A. Well it was stopped by Court Order.

. . . . . .

Q. I am talking about S & H stamps.

A. Yes, sir.

Q. Well what about those?

A. Well, we stopped all our accounts,—discontinued them.

Q. And what was the basis of that decision on the part of the S & H Company, do you know?

A. I do not know.

Q. You do not know,—you were merely instructed to stop them?

A. That is right.

Q. And you did stop it?

A. That is right.

[fol. 304] Q. And did you threaten to take the contract away from them if they didn't stop?

A. It wasn't necessary.

Q. It was not necessary; you would have taken them, and were so instructed by your employer, if they didn't stop, weren't you?

A. I was not instructed that way, no, sir.

Q. You were not; I hand you what has been identified as Defendant's Exhibit No. 2, and ask you to state if you are familiar with that document?

A. This is the first time I have ever seen this one.

Q. I will hand you what has been identified as Defen-

dant's Exhibit No. 3, and ask you to state whether or not you are familiar with that one?

A. Yes, sir, I am.

Q. And that is what?

A. That is a C & S collector book.

Q. A C & S collector book?

A. Yes, sir.

Q. And that is one of your competitors in the stamp business, is it, C & S?

A. Yes, sir.

Q. I call your attention to the language appearing on [fol. 305] the reverse side thereof, quote, "Don't leave your change on the counter. Get your stamps on each purchase".

By Mr. Miskovsky:

Now just a minute, your Honor please; the exhibit speaks for itself. If he is going to offer it, that is something else.

By Mr. Swinford:

We offer Defendant's Exhibit No. 3 in evidence.

By Mr. Miskovsky:

May I see it, please? (Exhibit handed to Mr. Miskovsky).

By the Court:

The Exhibit would speak for itself.

[fol. 306] Q. Mr. McCarty, Mr. Crowe calls my attention to the fact that there may be confusion in the record; when did Mr. Speed stop using double stamps?

A. At the same time the others did.

Q. It was March, '55?

A. Yes, sir.

Q. Thank you. Mr. McCarty, is it possible, under your

system of distribution of the S & H Green Stamps, under your contract, for a customer to purchase stamps without purchasing anything else,—are they for sale by themselves?

A. No, sir.

Q. They are not?

A. No.

Q. That is, the customer must, in order to secure stamps, must first do business with a person who distributes the stamps, one of your licensees,—is that right?

A. That is right.

Q. And in addition to that, he must buy some other article of merchandise?

A. Oh, no,—no.

Q. He doesn't have to,—can he go in and buy the stamps themselves?

A. One of our merchants, you mean, that uses our stamps?

[fol. 307] Q. No,—no, I am talking about the customer, Mr. McCarty?

A. Oh, I didn't follow you.

* * * * * * *

By Mr. Miskovsky:

To show it in the record, we will admit that you can't get stamps unless you buy something from some stamp merchant, and they issue one with each ten cent purchase, and that will end that.

By the Court:

That has been agreed to.

Q. They are always issued at the rate of one stamp for every ten cent purchase?

A. That is right?

Q. And that never varies, except on double or multiple stamp days, is that right?

A. That is right.

Q. In which case, according to the valuation that you have given them, $3.00 a book, would be $6.00 a book, is that right, Mr. McCarty?

A. No, that doesn't affect the value of the book.

Q. Well lets convert it, if you will, simply for the record, [fol. 308] and for myself,—what percentage does $3.00 a book compute at,—percentagewise?

A. I couldn't answer that.

Q. Well two, point five, isn't it?

• • • • • • •

Q. So that on double stamp days that is five per cent, —that is the value that the customer gets?

A. Right.

Q. He purchases an article for a dollar and gets five cents worth of stamps?

A. That is right.

• • • • • • •

Q. In the solicitation and servicing of these accounts, Mr. McCarty, have you learned whether or not the Thrif-T-Wise group ever sell merchandise on credit?

A. I don't believe they do.

Q. Do you know whether the I.G.A. merchants sell for credit?

A. Some do,—some don't.

Q. Does Mr. Stockton,—do you know?

A. No, I don't know about him.

Q. You do not know?

A. No.

[fol. 309] Q. Prior to the adoption, by the Thrif-T-Wise group, of your stamps, in 1952, were they selling groceries for credit?

A. There wasn't any Thrif-T-Wise group prior to that time.

Q. That is to say, the organization of the Thrif-T-Wise group was,—took place at the same time of their adopting your stamps,—do I understand you clearly?

A. That is right.

Q. The testimony thus far, Mr. McCarty, has been in connection with the value of the stamps to the customer. Will you advise us, briefly, what the cost of the stamp is to the herchant,—now in the first place, may I ask you, is it uniform?

A. No.

Q. It is not?

A. No.

Q. Well will you tell us the different variations in what the costs are?

A. It is approximately two per cent; a large Thrif-T-Wise group, a large dealer like them,—two per cent.

Q. I see, and what is the cost to the individual dealer?

A. Well it would depend on what quantity he buys them in.

[fol. 310] Q. Well would you give us the quantity breakdown?

A. Well, it starts out at one pad of stamps at $17.50, and graduates to ten pads at $14.00 a pad; that is 5,000 stamps to a pad.

Q. That is it graduates down from $17.50 to $14.00?

A. In quantity rates, yes.

Q. And that is for 5,000 stamps?

A. That is right.

Q. The cost to the merchant, although that varies, depending upon the quantity, the value of the stamps to the customer does not vary?

A. That is right.

Q. Now during the period when you were authorizing the use of double stamps on certain days in the week, did you make any different charge than the one you just described?

A. No, sir.

By Mr. Swinford:

That is all.

Cross examination.

By Mr. Miskovsky:

Question: Mr. McCarty, when you were asked a little bit ago about stores having given,—when you were asked what stores gave stamps in the Oklahoma City area, you neglected to recall about Standard and Humpty Dumpty, that are now in the process of becoming a national chain, [fol. 311] like Safeway chain here; they gave them during what period of time?

By the Witness:

Answer: 1936 to 1942.

Q. And they are the principal competitors of the Safeway chain in this community, are they not?

A. Right.

Q. Mr. McCarty, would you please state how many towns S & H has accounts with grocers in the State of Oklahoma where the Safeway chain operates?

A. I couldn't answer that, exactly,—

• • • • • • • •

Q. Go ahead, Mr. McCarty?

A. I couldn't answer exactly, but we operate,—we have [fol. 312] grocery stores in over a hundred towns in the State of Oklahoma that we have accounts with.

Q. Do you have grocery store accounts in the town of Muskogee, giving green stamps with merchandise?

A. Yes, we do.

Q. I mean with grocery sales?

A. Yes, sir.

Q. Does Safeway operate in the town of Muskogee, Oklahoma?

A. Yes, sir.

Q. For how many years have you been giving,—have trading stamps been given by grocery merchants in the town of Muskogee?

A. Ever since I have been with the Company.

Q. How many years has that been?

A. Twenty-three years.

Q. To your knowledge, during all of that period of time, has this chain ever sought to use the excuse of stamps as an excuse—

• • • • • • •

[fol. 313] Q. Well, did you have accounts with grocery stores featuring trading stamps in the town of El Reno, Oklahoma?

A. Yes, sir.

Q. And for what period of time have grocery stores there been issuing your stamps?

A. We may not have had accounts there continuously

for the twenty-three years, but we have had for several years of that time; we have had, since 1952.

Q. Does Safeway operate in El Reno?

A. Yes, sir.

Q. Have they operated in El Reno for a number of years?

A. Yes, sir.

[fol. 314] Q. Now I was going to ask this question,—maybe I can ask it before counsel gets excited,—if he will let me ask it and get it in the record,—and your Honor may sustain it, I don't know; Has this national chain, defendant, ever used stamps as an excuse to sell for less in the City of El Reno? Now wait a minute, until they object.

• • • • • • •

Q. To you knowledge, did Safeway run the advertisements in the other towns, that they ran in Oklahoma City?

• • • • • • •

Redirect examination.

By Mr. Swinford:

Question: Mr. McCarty, you have referred to your li-
[fol. 315] censees, or your clients, in the town of Muskogee, Oklahoma; have you copies of their contracts?

By the Witness:

Answer: No, sir.

Q. You do not maintain a record of their business done with you?

• • • • • • •

Q. Well I am asking you?

A. You are asking me if I have copies of their contracts?

Q. Yes?

A. I do not have.

Q. Well do you have a record of when they started using stamps?

A. I don't have it, no.

Q. You have no record?

A. We would have it in our New York office, yes.

Q. But you wouldn't have it in the local office?

A. No, sir.

Q. You have no record indicating whether they used them, or when?

A. Muskogee is a branch of its own,—it has its own branch office.

[fol. 316] Q. Oh, I see, that is a branch office?

A. Yes, sir.

Q. And you are speaking now purely from memory?

A. Yes, sir.

Q. Well are you quite sure that they were using them almost continuously?

A. I am quite sure, yes, sir.

Q. Where could we develop that information?

• • • • • • •

Q. Could you make it available?

A. Yes, sir.

Q. All right, are you familiar with the Thrif-T-Wise group at Muskogee?

A. Yes, sir.

Q. When were they organized in Muskogee?

A. In 1952.

Q. In 1952, and is it the Thrif-T-Wise group that you refer to as giving stamps?

A. Presently, yes.

Q. So they couldn't have used them before 1952, could they?

[fol. 317] A. The question you asked a while ago was about grocery stores.

Q. Well I am not arguing with you, I am just asking you another question; they could not have used them before 1952, in Muskogee, couldn't they, the Thrif-T-Wise group?

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Q. When, in 1952, did the Thrif-T-Wise group start using stamps?

A. I can't answer as to the exact date.

Q. Well, was it in the latter part of 1952?

A. Yes, sir.

Q. Thank you.

. . . . . .

[fol. 318] Recross examination.

By Mr. Miskovsky:

Question: Mr. McCarthy, to your knowledge, how long has stamps,—your trading stamps, been used in connection with the sale of groceries within the state of Oklahoma,—to your knowledge?

By the Witness:

Answer: For twenty-three years, that I can speak of personally, but I think it dates back prior to that. Mr. Kamp testified this morning that they were using them in 1911.

. . . . . .

[fol. 319] Louie J. Speed, being called as a witness by the defendant herein, after being first duly sworn upon oath to testify the truth, the whole truth and nothing but the truth, upon interrogation by counsel, testified as follows:

Direct examination.

By Mr. Swinford:

Question: State your name?

By the Witness:

Answer: Louie J. Speed.

Q. You are the plaintiff, Mr. Speed, against whom the Safeway has Cross-Petitioned?

A. Yes.

Q. You do business in a corporate capacity, don't you Mr. Speed?

[fol. 320] A. That is right.

Q. And the corporation is a member of the plaintiff

Association, and also the one whose conduct is in question, is that right?

A. Yes, sir.

Q. The corporation was named after you?

A. That is right.

Q. And you are the President of that corporation?

A. Yes, sir.

Q. How long have you been in the grocery business, Mr. Speed?

A. Since 1929.

Q. Where did you start?

A. With the Humpty Dumpty-Standard stores.

Q. And how long did you stay with them?

A. Until 1942.

Q. Then what did you do?

A. I went into a partnership with the A and J Food Market.

Q. The A and what?

A. The A and J Food Market.

Q. I see, and how long did you operate with them, as a partnership?

A. Until 1950.

Q. Until 1950; did you handle stamps in that operation?

[fol. 321] A. Yes, we did.

Q. What kind?

A. S & H Green Stamps.

Q. S & H Green stamps?

A. Yes, sir.

Q. Did you handle them continuously up until 1952?

A. We handled them until 1945.

Q. Until 1945?

A. Yes, sir.

Q. And then in 1945 you dropped them?

A. That is right.

Q. And then you picked them up again, when?

A. In 1952.

Q. In 1952,—all right. Now since 1952 you have been in business, where?

A. At 36th Street and North Shartell, 1455 Westwood Boulevard, and 1218 North Pennsylvania.

Q. You are the owner, or part owner, in all three of those locations?

A. That is right.

Q. And do you charge the same prices in all those stores?

A. Yes.

Q. And do you purchase the merchandise which you sell, at the same location, for all of those stores?

[fol. 322] Q. And what is your purchasing arrangement?

A. My purchasing arrangement with the wholesale houses, on a thirty day basis.

Q. And who is your principal supplier?

A. Fleming's I.G.A.

Q. And will you please explain to us the nature and your connection with the I.G.A. In the first place, what does I.G.A. stand for?

A. Independent Grocers Association.

Q. And are you a member of that group?

A. Yes, sir.

Q. And will you explain to us, please sir, the nature of the organization?

A. It is organized to do cooperative buying and advertising.

Q. And through what wholesaler do you maintain that cooperation?

A. Flemings.

Q. And is it dues paying organization,—tell us generally, the governmental structure of the organization?

* * * * * * *

A. It is a percentage volume program,—the total groceries that you buy you pay a percentage of it, two point, five, I believe is the figure that you buy the groceries at.

[fol. 323] Q. A two and one-half percent mark-up from Fleming to you?

A. Yes, sir.

Q. Is there any mark-up between,—or rather, is the price that Flemings re-sell for?

By Mr. Miskovsky:

Your Honor please, he just testified that it was two, point five, over their cost.

Q. Over the actual cost?
A. That is right.

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Q. And how many members in Oklahoma City and in Mid-West City belong to that organization?
A. I wouldn't know; I sure don't. I don't have those figures.
Q. Could you tell me approximately?
A. I would be guessing,—I just don't have any idea.

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By the Court:

If he knows, he can answer; if he don't,—you don't know, do you Mr. Speed?
A. No, sir.
[fol. 324] Q. Is Mr. Stockton a member of that organization?
A. I believe he is.
Q. How do you handle your advertising, Mr. Speed?
A. It is appropriated out to the number of stores that they have in the organization, to the cost of the ad.
Q. So you all contribute to an ad?
A. That is right.
Q. Do you have any regular time when you run advertisements?
A. Oh,—weekly.
Q. Weekly,—in what newspaper?
A. In the Oklahoman.
Q. In the Oklahoman,—do you sometimes advertise in the Advertiser?
A. I do personally, yes.
Q. You do personally; the I.G.A. confines itself chiefly to the Oklahoman?
A. That is right.

By Mr. Miskovsky:

That is the Daily Oklahoman, for the record, it is the Daily Oklahoman?
A. Yes, sir.

Q. Now on those occasions, at least, what do you do, enter a cooperative advertisement in the Oklahoman for a week, and all the I.G.A. merchants sell the same merchan-
[fol. 325] dise at the same price, at least as advertised; is that right?

A. As far as I know.

Q. If the cooperative ad calls for the sale of sugar at ninety-five cents, then you all have to sell it at ninety-five cents?

A. We do sell it at that,—we sell it that way.

Q. So to that extent,—

By Mr. Miskovsky:

Now wait just a minute,—if your Honor please, the form of the question, "you all have to sell it at that",—I think that is assuming a state of facts not in evidence. That is just a recommended selling price.

Q. Well I believe you said you did do it?

A. I do.

By Mr. Miskovsky:

They don't have to do anything.

Q. Mr. Speed, you do both cash and credit business?

A. Yes, sir.

Q. Does Mr. Stockton do a cash and credit business?

A. I don't know.

Q. You do not know?

A. No, sir.

Q. And what portion, percentage-wise only, of your business is for credit?

[fol. 326] A. About forty per cent, in one store.

Q. Forty per cent, in one store?

A. That is right.

Q. And what is the percentage in the other stores?

A. It is straight cash and carry.

Q. Straight Cash and Carry?

A. That is right.

Q. Your Number 1 store is the only store where you do a credit business?

A. That is right.

Q. In Number 2, you do a strictly cash business?

A. That is right.

Q. And did you start all three of those stores at the same time, Mr. Speed?

A. No, sir.

Q. Will you tell us when you started Number 1 store?

A. In 1941.

Q. In '41,—now Number 2?

A. I am not sure of the date, I believe it was 1943.

Q. And Number 3?

A. In 1954.

Q. Now after you started your Number 1 store in 1941, did you do strictly cash business for a while?

A. Yes, sir.

Q. For how long?

[fol. 327] A. Until 1950.

Q. Until 1950?

A. That is right.

Q. And then you started taking on some credit business?

A. That is right.

Q. And you adopted the S & H stamp, when?

A. In 1952.

Q. In October?

A. That is right. The contract, I believe, was dated in September; we started in October, the first of October, I believe it was.

Q. I hand you what has been identified, Mr. Speed, as Exhibit "A" of your Answer to the Cross-Petition, and ask you to state whether that is the first contract which you had with the S & H Stamp Company?

A. No.

Q. It is not?

A. No.

Q. The one that I showed you is dated March 14, 1952, is that correct?

A. Yes, it is.

Q. Now do you think that you had a contract with them before that, Mr. Speed?

A. I am sure I had a contract prior to this one here, yes,—I am sure I did.

[fol. 328] Q. You are sure you had a contract prior to this?

A. Yes.

Q. Well isn't that the one that you referred to,—I mean, do you think that was October, 1951?

A. It could be.

Q. Will you tell us, please, what the credit terms are with credit customers at your store, your Number 1 store?

A. It is thirty days, credit terms, and if the bill is paid by the 10th of the following month.

Q. I don't know that I understand?

A. It is thirty days, with the bill paid by the 10th of the following month.

Q. Well may I state it this way, and see if I am correct; do all credit customers have to pay their bills on or before the 10th day of the month following the date of purchase?

A. No.

Q. They do not?

A. No.

Q. Will you explain it to me then?

A. Well some of them have arrangements to pay on the first and the fifteenth.

Q. The first and fifteenth?

A. That is right.

Q. And what is your longest credit term?

[fol. 329] A. Thirty days.

Q. That is, if I buy groceries from you on the 17th, today, I don't have to pay for it until the 17th of next month?

A. Until the 10th of the following month. You have a period from the 17th to the 1st, and it is due on the 10th of the following month.

Q. Well, do your credit customers who have arrangments to pay twice a month, on the first and the fifteenth, except for those then, your longest credit term is always the 10th day of the month succeeding the date of purchase, is that right?

A. The 10th day of the following month?

Q. Yes?

A. Yes, if they buy on the first of the month it is due the first of the following month, and payable on the 10th.

Q. Yes, and you do not extend credit to anyone for a longer length of time than that?

A. Well, it is not planned, no.

Q. Well that is what I mean, not by agreement. We are all cognizant of the fact that people sometimes are late, but by contract you never permit,—you never contract for the payment of a bill after the 10th of the month following the date of purchase,—right?

• • • • • • •

[fol. 330] A. Yes, sir.

Q. And do you make any charge for that additional service?

A. Yes, sir.

Q. What charge do you make?

A. Two per cent.

Q. Every credit customer pays, in addition, a two per cent charge,—an additional two per cent charge for the privilege of credit?

A. That is right.

Q. That two per cent is the percentage of their total bill?

A. That is right.

Q. Now after your adoption of the S & H trading stamps, after some years of no trading stamps, late in the year of 1951,—right?

A. I believe that is right, yes.

Q. When did you start giving double stamps?

A. In the Spring of 1952,—the following Spring.

Q. You gave them from the Spring of 1952 until March the 14th, 1955?

A. That is right.

Q. A period of over three years?

A. That is right.

Q. And what day of the week did you give them on?

[fol. 331] A. Wednesdays.

Q. Wednesdays only?

A. Yes, sir.

Q. You never gave double stamps on any other day?

A. No.

Q. Did you hear the testimony of Mr. McCarty?

A. I heard part of it; I got in just a little late.

Q. Did his explanation of the graduated cost of these stamps agree with your understanding?

A. Yes.

Q. Was there a time, in connection with the operation of your business, when you paid more than two per cent for stamps?

. . . . . .

A. No, I have always paid the same price.

Q. You have always paid two per cent?

A. Yes, sir.

Q. When you gave double stamps, how much did they cost you?

A. There wasn't any reduction in the price of the stamps, [fol. 332] I paid the same price, two per cent.

Q. It was my understanding that in your deposition you said on double stamp days you paid $14.00 for every five thousand.

A. I just gave more stamps, but I paid the same for the stamps.

Q. It was still two per cent across the board?

A. Yes, that is right.

Q. When you talk about two per cent, you are talking about two per cent of your gross sales?

A. Two per cent of the gross sales for single stamps, but when I gave double stamps I furnished the stamps for the double stamps myself.

Q. Where did you get them?

A. I bought them.

Q. How much did you pay for them?

A. The same price that I paid for the rest.

Q. It is a little difficult for me to convert that percentage in there,—if you had more business,—but as a matter of machinics, how did you adjust the fact that you were giving double stamps on Wednesday?

A. I paid the same price for the stamps, and when I gave double stamps it just cost me four per cent,—two per cent for the double stamps.

Q. Thank you,—it cost you four per cent on Wednesdays? [fol. 333] A. That is right.

Q. Mr. Speed, you just stated what the cost to you was for those stamps,—or is for those stamps,—I assume that it has been uniform during these years; what is the value of that stamp to the customer?

• • • • • • •

A. Well I just don't know,—I sure don't.

Q. Well, have you ever made a representation to your customers as to the value of them?

A. No, sir.

Q. I hand you what has been marked as Defendant's Exhibit No. 4, and ask you to state what that is?

A. This is a hand-bill that I had distributed on March 11th, 1955, I think it was,—or '54,—no, '55.

Q. That is your advertisement to your customers?

A. Yes, sir.

Q. For further identification, this is what is commonly known as a throw-bill?

A. That is right.

Q. I call your attention to this statement appearing in it, Mr. Speed,—

• • • • • • •

[fol. 335] Q. Mr. Speed, I call your attention to that portion of Exhibit 4 which states, quote, "Stamps do not cost up to five per cent. Their cost is less than two per cent wholesale, and worth approximately three per cent when redeemed at retail".

• • • • • • •

Q. Unquote,—did you make that statement?

A. Yes.

Q. Was that your best judgment in March of 1955, in this throw-sheet, when this throw-sheet was issued?

[fol. 336] A. Yes,—uh hu.

Q. And on double stamps, it would be your opinion then, that it would be approximately six per cent on Wednesday, is that right?

A. According to that, yes, sir.

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[fol. 338] STIPULATIONS OF COUNSEL

By Mr. Crowe:

It is stipulated and agreed by and between plaintiff and defendant, that as to Exhibit "A", attached to defendant's Cross-Petition against plaintiff Speed, that the prices shown as the shelf price, opposite the items listed on the exhibit, on the dates shown, were the prices at which Speed sold those items.

That in the second column on Exhibit "A", headed "Probable Cost", that the cost of said items to the plaintiff Speed, [fol. 339] on the dates in in question, was not less than the cost shown under that column.

* * * * * * *

That is to Exhibit "B", attached to such Cross-Petition, under the column headed, "Shelf Price", plaintiff Speed, on that date, sold the items listed on the exhibit at the several prices set opposite such articles under such column.

That on the date shown on such Exhibit "B", the cost of the several items listed thereon, to the plaintiff Speed, was not less than the several costs shown under said articles [fol. 340] of merchandise, under the heading "Probable Cost".

That the computation shown in Exhibit "B", under the column headed "Per cent Mark-Up on Cost", is arithmetically correct.

It is further stipulated that on February 25, 1955, plaintiff Speed sold the items listed on Exhibit "P" at the prices shown opposite the items under the heading "Retail Price Each", with the exception of the item Ideal Dog Food, and Jello Instant Pudding, as to which no stipulation is made.

That the cost to the plaintiff Speed, of the several items shown on Exhibit "P", was not less than the cost of such items shown under the heading on said exhibit, "Probable Cost Each".

That the computation contained on said Exhibit, under the heading "Probable Net Percent Mark-Up on Cost", is correct arithmetically.

* * * * * * *

[fol. 344] By Mr. Crowe:

I might add, while we are talking about stipulations, Senator Miskovsky; now we are charged in the Petition here with selling a large number of items, in several towns, on Exhibit "B". We have no stipulation with reference to it, and I propose to put a witness on and prove each of those items as to why the price was made such as it was. I don't know any way to avoid it; we have no stipulation on it.

* * * * * * *

[fol. 347] By the Court:

Well now what is it that you want them to agree to?

By Mr. Crowe:

Well I was asking them if they could agree to those items charged there in Exhibit "B", as the prices at which we sold those items, were sold at prices that either were either reduced by the trading stamp merchants by five, point six per cent on Wednesdays, and two, point eight on other days in the week, or in case where trading stamps were not given, that some competitor lowered the prices first, and we met the price. That is what our proof will be, and it will take a long time to establish that, item by item, but that is the proof we are prepared to make, and if they are not prepared [fol. 348] to stipulate on it, we will just have to do it that way.

By Mr. Miskovsky:

Your Honor please, we couldn't stipulate that way, because it is our idea that only in Oklahoma City-Midwest City area did they use the trading stamps as an excuse or guise to cut prices; that in the other towns they used some other basis or excuse to cut prices, and we want to know what that is. We don't want to stipulate that it is either this or that,—in other words, that relates directly to the intent, which is involved in this case.

By the Court:

Well now can't we simplify this somewhat, gentlemen? Mr. Crowe said that they reduced the price, as I understood

it, in many instances to meet the competition of the stamps, —reductions by use of stamps, and in some instances because somebody had actually reduced prices, they were reduced.

By Mr. Crowe:

Yes, sir, that is right.

By Mr. Miskovsky:

Wait just one minute, your Honor, as I understand it only [fol. 349] in the Oklahoma City-Midwest City area did they reduce the price upon their allegation that it was to meet stamp competition,—nowhere else did they reduce the price in Oklahoma, according to my understanding, did they reduce it to meet the alleged stamp competition; that the other reductions were based on something else. Is that correct, Mr. Crowe?

By Mr. Crowe:

I think it is, substantially.

* * * * * * *

[fol. 350] By the Court:

You have made that statement; now if there is some item that somebody has reduced, without regard to stamps,—advertising,—you met that price.

By Mr. Crowe:

That is right, such as in Enid and—

By the Court:

That would simplify that by admitting the rest of it, to show that when you reduced the price you did it to meet an advertised price.

By Mr. Crowe:

May I just tell your Honor how I expect to prove it? [fol. 351] When we were charged with selling these items in

Exhibit "B", we took the items, in Exhibit "B", and have here assembled information as to whose prices were met on what date that it was done. I know of no way to prove it except to take it item by item and show, on Norman, Enid, Oklahoma City, Tulsa, and wherever we are charged, but we, of course, as a part of our defense, say the reason why we charged the prices we did; we are stipulating that their prices were less than six per cent mark-up required, and we are going to show, as our defense here, why we did it.

. . . . . .

[fol. 352] By Mr. Miskovsky:

If your Honor please, we might simplify this by this statement; if they will give us the ads which they state was the basis of their price cut, we will examine those and if they,— if we find them to be as represented, then we will enter into a stipulation as to that, that they met prices of someone else and they were below the minimum provided by the Unfair Sales Act.

. . . . . .

[fol. 357] By Mr. Swinford:

Question: Mr. Speed, on a joint advertisement of I.G.A. as submitted, do all I.G.A. stores sell for the same prices?

By the Witness:

Answer: I am not sure about the rest of them, but I do.

Q. But you do?
A. Yes.
Q. And on other days do you and Mr. Stockton,—Mr. Stockton is an I.G.A. merchant?
A. Yes.
Q. Do you generally remain competitive on other items?
A. Yes.
Q. And are you generally competitive with the Thrif-T-Wise stores on traffic items?
A. Of that, I am not sure,—I don't know.
Q. You don't know?
A. No.

Q. You are under subpoena, are you not,—did you receive a subpoena?

A. Yes.

Q. And you were asked to bring with you the prices which you charged during the months of September and October on certain specified traffic items; have you those?

A. No, sir, I don't have them; I sure don't.

Q. You do not have them?

[fol. 358] A. No, sir.

Q. You have no records in your business as to what you sold Tide for on September the 15th?

A. No, sir.

Q. You do not?

A. No, sir.

Q. How do you maintain business, operating three stores, without making any record of sale prices?

A. Well, we figure them on the basis of the cost of it,—percentage of cost on it, and stay with the competition.

Q. And stay with the competition?

A. Yes, major competition, yes.

Q. It is competition on traffic items that governs the price?

A. That is right.

Q. Now what, if any, service does I.G.A. perform for you in helping you conform with competition?

A. They have a store accounting plan, and keep books for us.

Q. They keep books for you?

A. Yes, sir.

Q. And they do also give you a suggested retail price list?

A. That is right.

[fol. 359] Q. And do you follow that suggested retail price?

A. To a certain extent.

Q. Well do you follow it on traffic items?

A. Yes.

Q. I hand you what has been identified as defendant's Exhibit No. 6, and ask you to state what that is?

A. This is a coloring contest program the I.G.A. stores had for the I.G.A. members.

Q. Well I handed you the wrong exhibit; I meant the document itself, not—

A. Well that is a price book, suggested retail prices.

Q. Was it furnished to you by your associate, I.G.A.?

A. That is right.

Q. And that contains all of the items which you purchase from them, and the suggested retail price?

A. Yes.

Q. And the cost to you?

A. Yes.

Q. Then what else?

A. Well that is just about it.

Q. All right, calling your attention now to page 14, and more particularly Item No. 1903, which is Chicken of Sea, Bite Size, 32; what is the 32?

A. That is the suggested retail selling price.

Q. That is a traffic item, is it not?

[fol. 360] A. I don't consider it so.

Q. Well is that the price that you charged?

A. No, sir.

Q. How do you know?

A. Because it shows eight per cent profit, and unless it is a soap item, or staple merchandise item, I do not follow those prices. It has an eight per cent mark-up.

Q. I see, you don't consider this as a traffic item?

A. No, sir.

Q. And the eight per cent,—the percentage figure in each of these squares, that is the profit, the percentage of profit to the merchant,—to you, in other words?

A. That is right, sure, the selling price.

Q. Yes, and what are the figures which are preceeded by a minus sign,—do you know?

A. Well that is shipping weight.

Q. Shipping weight?

A. Yes, sir.

Q. On the 15th of September, Mr. Speed, we charged you with selling baby food, and I am going to use generic terms here,—if I am wrong you correct me, if you will please,—

By Mr. Beshar:

What Exhibit number are you referring to?

By Mr. Swinford:

I am referring now to Exhibit "A" in the Cross-Petition [fol. 361] against the plaintiff Speed.

Q. —we charge you with the sale of baby food, Gurbers, at the rate of three cans for a quarter,—

By Mr. Miskovsky:

Wait a minute, are you referring to Exhibit "A" of your Cross-Petition?

By Mr. Swinford:

Excuse me, gentlemen; I have two different sets. It is Exhibit "C".

Q. Now as I understand it, you don't know whether you sold them at that price or not on that day, is that right?
A. Something like that; I remember.
Q. You remember that?
A. Yes.
Q. All right, lets pass on to the next item; Pineapple, Libby's Sliced, twenty-nine cents?

• • • • • • •

Q. Do you remember that price on that date?
A. Is that 1954, or 1955, please sir?
Q. Oh, that is in 1954.

• • • • • • •

[fol. 362] Q. Will you turn to page 10 of the September book there, 1954, Mr. Speed?

• • • • • • •

[fol. 363] Q. Do you find sliced pineapple on that date, marked in red?
A. Yes.
Q. As suggested by your associate, I.G.A., twenty-nine cents, is that the price you sold it for?
A. Yes,—wait a minute, that isn't the answer to your question; I was answering Mr. Miskovsky.
Q. Oh, excuse me.
A. The only time I possibly sold that for twenty-nine cents is if it was on sale. If it was an advertised item on

that day for twenty-nine cents, I sold it for that; if not, I didn't.

Q. Well all right, we will move to the next item, Cain's sugar; turn to page 39,—ten pound.

. . . . . .

[fol. 364] Question: Do you find sugar there, ten pound Cain?

By the Witness:

Answer: That is right.

Q. And the suggested retail price on that is what?

A. A dollar three.

Q. Did you sell it at a dollar three on that date?

A. Unless it was advertised.

Q. I beg your pardon?

A. If it was advertised at a dollar three, I sold it for a dollar three.

Q. All right, now it is a traffic item, isn't it?

A. Yes.

Q. And very competitive?

A. It is competitive, yes.

Q. All right, and you stated that you met competition [fol. 365] on traffic items.

A. Not a hundred per cent.

Q. Not a hundred per cent; well do you think you met that price?

. . . . . .

Q. Do you know whether you sold it for that price on that date?

A. I am not sure.

Q. You are not sure; do you think you sold it for more than that?

. . . . . .

Q. All right, now lets go to the next item, on the next page; turn to page 27,—did you find it?

A. Yes.

Q. The suggested retail is how much?

A. Ninety-five cents.

Q. What did you sell it for, if you know?

[fol. 366] A. I don't remember.

Q. You don't remember?

A. No.

Q. Is it a traffic item?

A. Yes.

Q. Are you generally competitive on traffic items?

• • • • • • •

Q. The next item is Oxydol, page 26?

A. Yes.

Q. The recommended price by I.G.A.?

A. Giant size, or regular?

Q. Giant size?

A. Seventy-three cents.

Q. You were charged with selling it for seventy-three cents on that day,—is that correct?

A. Yes, sir.

Q. That is correct; all right sir, we can skip the other detergents for the purpose of saving time,—Tide and Fab are the same price, Mr. Speed, is that correct?

A. Yes, sir.

Q. All right, the next item is Del Monte Corn,—will you turn to page 11,—you are charged with selling for fifteen cents; what was the recommended price by I.G.A.?

[fol. 367] A. Fifteen cents.

Q. Did you sell it for fifteen cents?

A. I am sure I did.

Q. You are sure you did; the next item is Milnot,—do you recognize that?

A. Yes.

Q. Three for twenty-nine was the going price at that time?

A. Yes.

Q. Is that what you sold it for?

A. Yes.

Q. And the next item is flour,—need you refresh your memory, page 42,—you are charged with selling it for fifty cents, five pounds Gold Medal Flour.

• • • • • • •

Q. All right, Mr. Speed, we state in our Cross-Petition that you sold it for fifty cents; that was the recommended retail price, wasn't it?

[fol. 368] Q. Do you find flour, at page 42 there, Mr. Speed?

A. Yes, sir.

Q. What is the recommended price?

A. Fifty cents.

Q. Did you sell it for fifty cents on that date?

A. Yes, sir, I suppose I did.

* * * * * * *

[fol. 369] Q. All right, page 40, Morton's Salt; the Cross-Petition says you sold it, two for twenty cents; what is the recommended price?

A. Ten cents.

Q. Do you think you sold it, two for twenty?

* * * * * * *

Q. Well what did you sell it for, Mr. Speed?

A. If it was advertised for ten cents, I sold it for ten cents.

Q. If it wasn't advertised for ten cents, but I.G.A. recommended you charge ten cents, what did you charge?

[fol. 370] A. Eleven cents.

Q. On Wednesday, September the 15th, you charged eleven cents for Morton's Salt?

A. That has been my regular price for—

* * * * * * *

Q. Did I misunderstand you, Mr. Speed?

* * * * * * *

A. My regular price on it was eleven cents.

* * * * * * *

A. I don't know whether it was an advertised day or not; I sure don't, but I never sold it for less than eleven cents, unless it was on Wednesday,—is that an advertised day?

Q. No, it is not, so your price then on Wednesday, Sep-

[fol. 371] tember 15th, was eleven cents?

A. I don't remember of ever selling it for anything but eleven cents except on an advertising day.

Q. All right, lets move on to the next item,—Lipton's Tea. —we say that you sold Lipton's Tea, a quarter of a pound for thirty cents on September the 15th; do you find it,—it is page 33; what was the recommended price?

A. Thirty cents.

Q. What did you sell it for on that date?

A. I don't remember.

Q. You don't remember?

A. I sure don't.

Q. All right, the next item is Chicken Sea Tuna, page 14; we allege that you sold it for thirty-two cents,—what was the recommended price?

A. Thirty-two cents.

Q. And what did you sell it for?

A. My regular shelf price was thirty-three cents.

Q. That isn't what I asked you; what did you sell it for on September the 15th?

A. I don't remember.

Q. You don't?

A. No, I sure don't.

Q. All right, the next item is Kleenexs, we charge that you sold them for thirteen cents,—I mean allege that you [fol. 372] sold them for thirteen cents on that date; look at page 48,—what is the recommended price?

A. Thirteen cents.

Q. What did you sell them for?

A. I don't remember.

Q. It is a traffic item, isn't it?

A. Yes, sir.

Q. A very critical traffic item?

A. Not in my—

• • • • • • •

Q. Well, Mr. Speed, do you remember what you charged for Kleenex on that date?

• • • • • • •

Q. Didn't you plan to stay competitive on Kleenex?

A. No, sir.

• • • • • • •

Q. Oh yes, we allege you sold Cranberry Sauce for [fol. 373] twenty cents on September the 15th, 1954,—Cranberry Sauce, page 18; what is the recommended price?

A. Twenty cents.

Q. What did you sell it for?

A. I am not sure.

Q. You don't know whether you did or didn't?

A. That is right.

* * * * * * * *

Q. All right, now we could spend a great deal of time, Mr. Speed, going through these,—

* * * * * * * *

Q. Would you tell us, please, whether there were any price changes, according to your recollection, between September the 15th, 1954, and marked, either up-grade, or a reduction, in the market of your costs in these traffic items between September the 15th, 1954 and October the 22nd, 1954?

* * * * * * * *

[fol. 375] Q. Well now are we clear on this one thing, Mr. Speed, that on traffic items you generally followed the recommended price?

* * * * * * * *

[fol. 376] Q. That you generally followed the recommended price of the Fleming organization, contained in that document that you have in your hand, is that right?

A. Not a hundred per cent.

Q. Not a hundred per cent,—I said generally?

A. Generally.

Q. Generally,—all right; now, will you please look at these Exhibits which I hand you, being "C" to "O" to the Cross-Petition against you, and state whether or not all of the items listed thereon are traffic items, as you understand the term?

By the Court:

Just a minute now, Mr. Swinford; is there any contention that this man Speed sold for less than the Statutory mark-up, exclusive of stamps?

By Mr. Swinford:

Not exclusive of the stamps, your Honor. He made some statements, but we make no point of it,—but what they refuse to agree is that he sold those items at these prices. We have to have a basic price.

[fol. 377] By the Court:

But it is not your contention that he sold below the Statutory mark-up?

By Mr. Swinford:

Without stamps, no, sir.

By the Court:

Well I think that takes care of that.

* * * * * * * *

By Mr. Crowe:

Well if the Court please, what we deem it to be necessary for us to prove, is two things; we are contending that Speed sold below cost by giving stamps. We think it is [fol. 378] incumbent upon us to prove what the items cost him, and what he sold them for, in order for us to determine whether the stamp reduced it below the legal cost, and we are trying to prove, on these exhibits here, which they will not stipulate on, wherever possible, that those were his costs, and his selling price. Now it is an absolute basic thing in our defense, and also in the Cross-Petition that goes to him, that he was selling at the lowest price, the lowest possible cost,—the lowest possible mark-up, and giving stamps with them besides.

* * * * * * * *

[fol. 380] By Mr. Miskovsky:

Now if your Honor please, they have evidently made these exhibits based upon some kind of a survey, or some kind of a factor, or exhibit. Now if we can shorten this,

why don't they simply show us how they arrived at this, and what they base it on, and then if they have got advertisements, or what-not, we will waive identification of them [fol. 381] and they can put them in, or we will make a stipulation. But we can't stipulate until they show us what they have, and we can't admit it.

* * * * * * *

[fol. 383] By the Court:

Well are those prices below the statutory mark-up?

By Mr. Crowe:

No, sir, but they are right on it, and we ask them to stipulate whether he sold at that price or not, and he said, "I [fol. 384] haven't got any records", and they won't agree to anything. Now if they won't agree, we are going to prove it,—we have got to prove it, and I think your Honor sees that it is essential to us that at least they were sold at such a low price that the value of stamps would reduce it below six and three-quarters, if it reduced it. In other words, we certainly must show for the record, for the benefit of the Supreme Court, if for nobody else, that these prices were right at the minimum, and that the stamps were sufficient to get it below the minimum, because that is our cause of action against Speed.

* * * * * * *

[fol. 385] By Mr. Miskovsky:

We have already admitted, your Honor, "A", "B" and "P". There is enough in the record, because those were laid directly to him, and we will check those.

By the Court:

Yes, I said the other day that if there was one violation, that was enough.

By Mr. Miskovsky:

So these other things would be more or less cumulative, but counsel stands up and threatens that he is going to

prove it if we don't admit it, but I don't think he is going to prove it by this witness, because he doesn't remember. Now to prevent him from carrying out his threat, if he will simply give us information upon which he bases it, after court adjourns this afternoon we will examine it, and then we may enter into a stipulation upon that ad, which would be more or less cumulative insofar as this plaintiff is concerned.

. . . . . .

[fol. 388] By Mr. Crowe:

Excuse me, the Senator has a misconception about these [fol. 389] exhibits. We are not claiming that these are the prices we met. In our Cross-Petition we say that those are the prices Speed sold them for, and gave stamps, which reduced them below the minimum allowed. It isn't defensive; it is our Cross-Petition against Speed,—that is what this Exhibit is for,—so that if they are not willing to stipulate as to these traffic items in these Exhibits "C" to "O", inclusive, were sold at near the statutory mark-up, so that the stamps, if they do reduce, that that is a sufficient value to reduce it below the minimum mark-up allowed, then we have no choice except to take up each item and ask the man who was selling the article whether he sold them at that or not.

. . . . . .

[fol. 391] By Mr. Miskovsky:

We will agree to this,—that traffic items, he did sell, at or near the statutory minimum. That in no instance that we know of, did he advertise for sale, offer for sale or sell traffic items, or any other items, in violation of the law and less than the statutory minimum. That, we will agree, but we are not going to agree that in every instance it was right at the statutory minimum, or at the figure you have alleged, because we don't know, and the subject of intent is directly related to the whole situation.

By Mr. Swinford:

I think that is a fair statement, and may I suggest this; you say "at or near the statutory minimum"?

By Mr. Miskovsky:

Yes, sir.

• • • • • • •

[fol. 393] By Mr. Lane:

Your Honor, may I be heard?

By the Court:

Yes, sir.

By Mr. Lane:

Exhibits "A", "B" and "P" all refer to Mr. Speed, by name, and that Speed was actually selling for those prices. Exhibits "C" through "O" do not name Mr. Speed, and it seems fair to assume that therefore he was not shopped on those prices, and that those prices, therefore, are based on speculation so far as Mr. Speed is concerned. Now someone verified that Petition; when he verified that Petition he swore that those were Speed's prices. If, according to Mr. Swinford here, if that is so, let him show that Speed was shopped, or let him show that he relied upon certain advertisements by Speed, and we will then agree that those prices were in fact Speed's prices; otherwise we can't, for lack of information.

By Mr. Swinford:

That is what we propose to do.

• • • • • • •

[fol. 394] Q. Mr. Speed, we have covered, I believe, the September 15th list of articles which appears on Exhibit "C", and I now invite your attention to September the 17th, which appears on "D"; we allege in that case that Crisco was sold at nineth-five cents on September the 17th; do you recall what the recommended price by I.G.A. was on the 17th,—was it ninety-five cents?

A. That is right.

Q. Did you sell it at that price?

A. I am pretty sure I did.

Q. The next item is Milnot, three for twenty-nine; would you recognize that?

A. I am sure I did.

Q. Gold Medal Flour, at fifty cents; do you recognize [fol. 395] that?

A. No.

Q. I beg your pardon?

A. No.

Q. You don't believe you did, though?

A. That is right.

Q. Do you recall that that was the recommended price for that, fifty cents?

A. That is right.

Q. What is it that leads you to believe that that was not your price?

A. Other than an advertised ad, I never sold Gold Medal Flour for less than fifty-one cents.

Q. I see; we have an advertisement of Stockton's I.G.A. on that date in which he advertised it for fifty cents; would that indicate that you met his competition?

* * * * * * *

Stockton's ad, * —

Q. Well, move now, if you will, to Wednesday, September the 22nd, 1954; Baby food, three for a quarter?

A. Yes.

Q. Pineapple, twenty-nine cents?

[fol. 396] A. No.

Q. No?

A. No.

Q. Well now you sold Pineapple for twenty-nine cents on September the 15th; what made you believe that you raised your price?

A. Unless it was on an ad it was never sold for twenty-nine cents.

Q. You never sold it for twenty-nine cents?

A. Not unless it was on an ad.

Q. All right,—

* * * * * * *

Q. —Sugar for a dollar three?

A. No.

Q. No?

A. No, regular price; no sale price.
Q. Crisco, ninety-five?
A. Yes.
Q. Tide, seventy-three?
A. Yes.
Q. Corn, fifteen?
A. Unless it was advertised.

By Mr. Crowe:

I don't think the record is clear on that.

[fol. 397] By Mr. Miskovsky:

I believe he means "no", that he didn't sell at that price unless there is an advertisement on it on that date.
A. That is right.
Q. Five, Gold Medal Flour at fifty cents?
A. Not unless it was advertised.
Q. Lipton's tea, thirty cents?
A. Unless it was advertised.
Q. Kleenex, thirteen cents?
A. Unless it was advertised.
Q. You sold that tea for thirty cents on the 15th of September, Mr. Speed, why don't you think you sold it for the same price on the 22nd?
A. Well if it was advertised, I did.
Q. Well now wait a minute; you admitted that you sold Lipton's tea for thirty cents on September the 15th, as recommended by the I.G.A.,—
A. No.
Q. Yes, you did,—on September the 15th,—now what leads you to believe you didn't sell it at the same price on September the 22nd?

* * * * * * *

[fol. 398] A. Well is it in the record that I said I sold it for thirty cents?
Q. Yes, sir, on September the 15th.

* * * * * * *

[fol. 399] Q. Mr. Speed, are you answering my questions, that you did not, simply because you do not remember?

A. Unless Lipton's tea was advertised for thirty cents it was never sold for that,—not for less than thirty-one cents.

Q. All right, I hand you what has been identified as Defendant's Exhibit No. 5, and direct your attention to that portion marked 5-f, and ask you to examine it?

A. Yes,—all right.

Q. That was dated September the 8th, was it not?

A. September the 9th.

Q. September the 9th; I will ask you to state whether or not you sold the articles listed on that page at those prices, as disclosed by that affidavit,—on that date?

. . . . . .

A. September the 9th was on a week-end, and that was a week that we had an ad,—that particular week.

Q. I didn't ask you why; I asked you to state whether or not you did?

[fol. 400] A. I did.

Q. And you gave the stamps that are attached to that page, didn't you?

A. Yes, sir.

Q. And this is your cash register receipt, showing all of the items, and the prices charged?

A. That is right.

Q. All right, now—

. . . . . .

A. I don't know.

. . . . . .

[fol. 401] A. Now your question, Mr. Miskovsky, was, do I know these sales were made?

By Mr. Miskovsky:

Yes?

A. I would say yes, because my sales cash register slip is here.

. . . . . .

Q. I now call your attention to Exhibit 5-e, or 5-b,—now that is dated when,—what date?

A. September the 8th.

Q. September the 8th; now will you examine the items shown thereon and the prices opposite those items and state [fol. 402] whether or not you sold those items at those prices on that date?

. . . . . .

A. I would say yes.

Q. All right, I now direct your attention to page 5-p; did you sell those items listed there, at those prices, on that date?

. . . . . .

[fol. 403] Q. Your answer, please?

A. It is possible it could be, yes; I would say yes.

Q. All right, that was on September 8th,—that fell on Wednesday; is that a week-end advertising plan?

A. September the 8th?

Q. Yes, was that a week-end?

A. Well I am not sure.

Q. I think you will find it fell on Wednesday?

A. Well I am not sure.

Q. Well assuming that it fell on Wednesday, September 8th, 1954, that would not be an advertising date, would it? —it could not be a special advertisement?

A. No,—no.

Q. So it would be a regular, established mid-week price of yours on September the 8th, 1954?

A. Yes.

Q. All those items; all right, so if that was your mid-week price, you continued it, buy and large, for some time, didn't you?

A. Yes.

Q. That was your regular price, so there is no question [fol. 404] about those items?

A. That is right.

Q. Will you pick up the Exhibit 10, Defendant's Exhibit No. 10, and turn to September the 22nd, 1954,—I believe that is "D", is it not, or "E"?

A. On the 22nd,—yes, "E".

Q. Yes,—now I will call your attention to that column marked "Shelf Price" there, and the fact that the exhibit that I just handed to you, you admit that your regular price

of Gurber's Baby Food during this time was three for a quarter, is that right?

A. Yes, sir.

Q. And your regular price for sugar was a dollar three?

A. Yes.

Q. And the detergents were seventy-three?

A. Yes, sir, that is right.

Q. Which includes Tide, and Vel,—

A. And Oxydol.

Q. —and Oxydol; now your regular price for that Del Monte corn was fifteen cents,—right?

A. Yes, sir.

Q. And your Gold Medal Flour was fifty cents?

A. I am not sure.

Q. You are not sure on that; all right, now at least as to those items, that was your regular price during this [fol. 405] period?

A. Yes, sir.

Q. All right; now turn, please sir, to September the 24th,—you again find the same prices repeated, do you not?

A. Yes.

Q. Sugar, a dollar three; Crisco, ninety-five; Tide, seventy-three; Milnot, three for twenty-nine; Flour, fifty cents; Baby Food, three for a quarter? Was that your established regular price at that time?

• • • • • • •

A. Everything, with the exception of flour.

Q. And the flour,—you think the flour is erroneous?

A. Yes.

Q. All right; now please turn,—what do you think the price of flour was?

• • • • • • •

Q. Well what was the price of flour?

• • • • • • •

[fol. 406] A. Fifty-one cents.

Q. All right sir, now for September the 29th,—same items?

A. Yes.

Q. Established price, Pineapples, twenty-nine cents,—and sugar, by that time, had gone down to a dollar, hadn't it?

A. I don't remember that, sir.

Q. Well, on September the 27th, Mr. Speed, you have a price change from I.G.A. Now will you look, please sir, at page 39 and give us the recommended price by I.G.A. for sugar at that time?

A. One Dollar.

Q. One dallar; was that your price at that time?

A. I don't remember; I am not sure.

Q. You don't remember?

A. No, sir.

Q. It is a heavy traffic item, isn't it?

A. Yes, sir.

Q. You followed the recommended price, didn't you?

A. Well, it possibly could be.

Q. All right, Crisco, ninety-five?

A. Yes, that is right.

Q. Oxydol, seventy-three,—no, I am not referring now, Mr. Speed, to the manuel, I am referring to the Exhibit which is dated September the 29th, on which we allge you did it.

[fol. 407] A. Oh, I see.

Q. Now may I start up again with Crisco, ninety-five?

A. That is right.

Q. That was your regular price?

A. Yes, sir.

Q. Oxydol, seventy-three?

A. Yes.

Q. Tide, seventy-three?

A. Yes.

Q. Fab, seventy-three?

A. Yes.

Q. Milnot, three for twenty-nine?

A. Yes.

Q. Flour, fifty cents?

A. Fifty-one.

Q. Fifty-one, all right; Lipton's tea, thirty?

A. Not our regular price, no.

Q. What was your regular price?

A. Thirty-one.
Q. Thirty-one; all right, Kleenex, thirteen?
A. No.
Q. What was it?
A. Fifteen cents.
Q. Fifteen cents for Kleenex; all right, back to Exhibit, October 1; Baby Food, three for a quarter?
[fol. 408] A. Yes.
Q. Sugar, a dollar?
A. I am not sure.
Q. It had gone down to a dollar previously, hadn't it?

* * * * * * *

A. Well I am not sure; it took a little decline some place along there, but I am not sure when it was.
Q. But you are not sure that it wasn't?
A. No,—that is right.
Q. All right, Crisco, ninety-five?
A. Yes, sir.
Q. Tide, seventy-three?
A. Right, sir.
Q. Fab, seventy-three?
A. Yes, sir.
Q. Oxydol, seventy-three?
A. Yes.
Q. Milnot, three for twenty-nine?
A. Right.
Q. Flour, fifty cents?
A. No.
Q. Kleenex, thirteen?
[fol. 409] A. No.

By Mr. Miskovsky:

Wait a minute, let him give the price of flour, if he knows, to save us going back over it.

By Mr. Crowe:

Well the last two items would be fifty-one and fifteen, is that right?
A. Yes, sir.

Q. The next one, October the 4th, 1954; the items are Baby Food, three for a quarter, is that right?

A. October, '54?

Q. October the 4th, 1954, yes, sir, the next exhibit?

A. This is dated '55.

Q. Well that is an error; it should be '54.

• • • • • • •

Q. All right, Baby Food, two for a quarter,—that is another typorgaphical error,—three for a quarter?

A. Yes, sir, three for a quarter.

Q. Sugar, a dollar?

[fol. 410] A. I am not sure about that.

Q. You are not sure about that; Crisco, ninety-five?

A. Yes.

Q. Tide, seventy-three?

A. Yes.

Q. Oxydol, seventy-three?

A. Yes.

Q. Fab, seventy-three?

A. Yes.

Q. Pineapple, twenty-nine?

A. I am not sure about that.

Q. You are not sure about the Pineapple?

A. No.

Q. You hadn't changed the price of Pineapple since September the 15th, had you?

A. Not unless it was advertised.

Q. I beg your pardon?

A. Unless it was advertised.

Q. You think twenty-nine cents was an advertised price?

A. Yes.

Q. What is your best recollection as to what you sold sliced pineapple for on October 4th, '54?

A. It would be either thirty-two or thirty-three cents.

Q. All right, on Wednesday, October the 6th; Baby Food, three for a quarter?

[fol. 411] A. Yes.

Q. Pineapple, twenty-nine?

A. I am not sure.

Q. You are not sure; all right, Sugar, a dollar?

A. I am not sure on that, either.

Q. You had a price change on sugar and now you can't remember when it was?

A. No, I can't.

Q. Is the price change reflected in the I. G. A. recommended specials,—isn't it?

A. It is reflected, yes, sir.

Q. All right, lets take a look.

• • • • • • • •

Q. Well, when the price change occurred,—was recommended by I. G. A., did you follow the recommendation?

• • • • • • • •

A. Some time several days after that,—a week or two after that.

Q. Well we are now several days after that,—we are up in October.

[fol. 412] A. Well I am not sure about the particular time.

Q. Well, but you do think as soon as you got around to it you followed their recommendation?

A. Yes.

Q. Is that right?

A. Yes.

Q. On sugar?

A. Yes.

Q. All right, sir, on September the 27th, it went down to a dollar; do you think by October the 6th you got around to changing your prices?

A. Well I am not sure.

Q. You are not sure?

A. No.

Q. All right, Mr. Speed, Crisco, ninety-five?

A. Yes.

Q. Oxydol, seventy-three?

A. Yes.

Q. Fab, seventy-three?

A. Yes.

Q. Tide, seventy-five?

A. Yes,—no.

Q. Is that a typegrophical error?

A. I believe it is.

Q. Change that to seventy-three.

* * * * * * *

[fol. 413] Q. Well is it a typegraphical error?

A. I am sure it is.

Q. It should be seventy-three?

A. Yes.

Q. Corn, fifteen cents?

A. I am not sure on that,—no.

Q. That is the same price you always charged in the middle of the week for corn, isn't it?

A. For a short period of time we charged fifteen cents.

Q. Well, you charged fifteen cents for corn here?

A. Well, I would say 'yes' to that.

Q. You would say 'yes' to that; all right, Milnot, three for twenty-nine?

A. Yes.

Q. Flour, fifty?

A. Fifty-one.

Q. Fifty-one; Kleenex, thirteen?

A. Fifteen.

Q. All right; October the 8th, Baby Food, three for a quarter?

A. Yes.

Q. Pineapple, twenty-eight cents?

A. No.

[fol. 414] Q. Now are you on October the 8th?

A. Yes, sir.

Q. All right; Oxydol, sixty-nine cents?

A. No, I never did sell Oxydol that cheap.

Q. All right; Tide, sixty-nine?

A. No, sir.

Q. Fab, sixty-nine?

A. No.

Q. Cheer, seventy-three?

A. Yes.

Q. Corn, fifteen cents?

A. We will say yes on that.

Q. Flour, fifty cents?

A. No.

Q. No,—what was the price of flour?

A. Fifty-one.
Q. Fifty-one; Kleenex, thirteen?
A. Fifteen cents.
Q. Sugar, a dollar?

. . . . . .

Q. Milnot, three for twenty-nine?

. . . . . .

[fol. 416] Q. Now I hand you what has been identified as Defendant's Exhibit No. 11, Mr. Speed, and ask you to first examine that advertisement, and then tell us what it is? What is it, Mr. Speed?
A. Well this is an ad for the I.G.A.
Q. All right, advertised what date?
A. Friday, October the 8th, 1954.
[fol. 417] Q. All right, what did you charge for baby food?
A. Three cans for twenty-three cents.
Q. Pineapple,—I don't believe that is shown, is it; Oxydol?
A. Sixty-nine cents.
Q. Tide?
A. Sixty-nine.
Q. Fab?
A. Sixty-nine.
Q. Cheer?
A. I don't see Cheer on here.
Q. All right, corn, Del Monte?
A. I don't see corn on here,—oh,—I see Cheer on here, too; seventy-one cents.
Q. All right, what was corn; did you find corn?

. . . . . .

Q. Del Monte,—what did you charge,—what was the price?
A. Fourteen cents.
Q. All right; what did you tell us a while ago your regular price of corn was, that Del Monte corn?
A. Fifteen.
Q. Fifteen; and on this day you sold it for fourteen, on October the 8th, you sold it for fourteen cents?
[fol. 418] A. As advertised, yes.

Q. All right, Gold Medal Flour, five pounds?
A. Forty-eight cents.
Q. And what was your regular price?
A. Fifty-one.
Q. Now are you quite sure that you weren't selling it for fifty cents on previous dates, that we have referred to?
A. No,—fifty-one.
Q. But on this day you sold it for forty-eight?
A. Yes.
Q. And that was a violation of law, wasn't it?

* * * * * * *

Q. Do you know?

* * * * * * *

Q. Did you have a six per cent mark-up on these items in these advertisements?
A. I am not sure at this particular time.
Q. How much did you sell Kleenex for?
A. We charged them two for a quarter.
[fol. 419] Q. Well how much did you sell them for?
A. Twelve cents.
Q. All right, what did you say your regular price was?
A. Fifteen.
Q. Cain's sugar?
A. Here it is ninety-five cents for ten pounds.
Q. Ninety-five; what did you say your regular price was?
A. Either a dollar three, or a dollar five, as far as I know.
Q. Milnot?
A. Three for twenty-nine.
Q. I beg your pardon?
A. It is three for twenty-seven here.
Q. Three for twenty-seven, on October the 8th; all right, Crisco?
A. Three pounds for ninety cents.
Q. Three pounds for ninety cents, and you sold it for that price?
A. Yes.
Q. All of those items that are listed there, right?
A. Yes, sir.
Q. All right.

By Mr. Miskovsky:

What is the date of that ad, please sir?

By Mr. Swinford:

October the 8th, 1954. Now we offer in evidence Defen-
[fol. 420] dant's Exhibit No. 11.

By Mr. Miskovsky:

No objection.

By the Court:

Very well, it will be admitted.

Q. All right; now, can we move to October the 13th; Pineapple, twenty-eight cents?
A. Not as the regular price, no.
Q. Well I am talking about October the 13th,—you just tell us on that day?
A. Well I am not sure.
Q. All right; sugar, a dollar?
A. I am not sure on that, either.
Q. You are not sure; Tide, sixty-nine?
A. I don't remember of meeting those prices, I am sure, Mr. Swinford.
Q. All right, I will skip over that and Oxydol then; Milnot, three for twenty-eight?
A. No.
Q. You don't think so; Flour, fifty cents?
A. I am not sure on that.
Q. Well you sold it for forty-eight cents just a week before?
A. On an ad, yes, sir.
Q. All right; will you turn now to October the 15th?
[fol. 421] A. All right, I have it here.
Q. All right; Baby Food, three for a quarter?
A. Yes.
Q. Pineapple, twenty-nine?
A. That, I am not sure.
Q. Not sure; sugar, ninety-five?
A. I am not sure on that.

Q. Crisco, eighty-six?
A. No.
Q. Are you sure?
A. I am pretty sure.
Q. All right, Tide, sixty-nine?
A. No.
Q. Cheer, sixty-nine?
A. No.
Q. Fab, sixty-nine?
A. No.
Q. What did you say?
A. No.
Q. Milnot, three for twenty-seven?
A. No.
Q. Gold Medal Flour, forty-eight?
A. No.
Q. Miracle Whip, fifty-three?
A. No, not as a shelf price.

[fol. 422] Q. I was asking about this date; I hand you an instrument which has been identified as Defendant's Exhibit No. 12; what is that?

A. That is an ad on Friday, October the 15th.
Q. In The Daily Oklahoman,—whose ad?
A. The I.G.A.'s.
Q. Did you sell the articles listed in that ad at the prices listed therein?
A. I would say yes, on an ad.
Q. All right, what did you sell Baby Food for there? Maybe it is not shown.
A. I expect it is on here somewhere,—no, I can't find it.
Q. You can't find it; all right, Libby's Pineapple, sliced?
A. Libby's sliced pineapple is not on here.
Q. I think you will find them three for eighty-five, isn't it?
A. Here is Del Monte pineapple, but not Libby's.
Q. Isn't that competitive price cost approximately the same?
A. Del Monte pineapple,—yes.
Q. They are competitive,—right?
A. The same quality.
Q. All right, three for eighty-five, of course, is less than

[fol. 423] what you charged for it; all right, the next item is sugar, Cain's?

A. Ninety-five cents.

Q. All right, Crisco?

A. Eighty-six cents.

Q. Tide?

• • • • • • •

Q. Cheer,—Fab?

A. I don't find Cheer.

Q. Detergents were sixty-nine cents, weren't they?

A. Yes.

Q. All right, Milnot, three for twenty-seven?

A. Yes.

Q. Gold Medal Flour, forty-eight cents?

A. Yes.

Q. Miracle Whip, fifty-three?

A. Yes.

By Mr. Swinford:

We offer in evidence Defendant's Exhibit Number 12, [fol. 424] if the Court please.

By the Court:

It will be admitted.

Q. Now will you look at the last date, which is October the 22nd, on the Exhibit; look at the shelf prices shown on it, Mr. Speed, and tell us whether you did or did not sell those articles at those prices on that date?

A. If they were advertised, I did.

Q. Well, if they were not advertised?

• • • • • • •

A. Some of them, I would say yes.

By Mr. Crowe:

Which ones?

A. Baby Food; sugar; Crisco; Tide; Fab; Milnot, and that is it.

By Mr. Crowe:

You say you sold them at the prices shown on Exhibit "A"?

A. Yes.

Q. I will hand you what has been identified as Defendant's Exhibit No. 13, and ask you to state what that is?

A. This is an ad that was run in The Oklahoman Friday, October the 22nd, 1954.

[fol. 425] Q. We have alleged that you sold sugar on that day for a dollar three; what did you actually sell it for?

A. If it was advertised—

Q. I didn't ask you if it was advertised; this is an I.G.A. advertisement?

A. I.G.A., yes.

Q. On October the 22nd, did you sell the articles listed in there, at the prices set forth?

A. It is advertised at ninety-five cents; that is what I sold it for.

Q. That is what you sold it for? Sugar?

A. I complied with the ad, yes.

Q. We say that you sold it for a dollar three, but you say ninety-five.

* * * * * * *

Q. We charge you with selling Tide, Mr. Speed, on [fol. 426] October the 22nd for seventy-three cents; what did you actually sell it for?

A. Well I am not sure.

Q. Isn't it shown there?

A. No.

Q. Is Fab shown there?

A. Fab is, yes.

Q. What is the charge for Fab?

A. Sixty-eight cents.

Q. We charge you with selling it for seventy-three and you sold it for sixty-eight?

A. Yes.

Q. All right, Milnot, three for twenty-nine? That is the regular price on Milnot, isn't it?

A. Yes.

Q. All right, Gold Medal Flour, fifty cents; wasn't that your regular price on Gold Medal Flour at that time?

A. No, I don't believe it was.
Q. Well what did you sell it for on that date?
A. I am pretty sure it was fifty-one.
Q. Fifty-one; all right, Kleenex, we charge you with thirteen,—what did you sell it for?
A. Twelve cents.
Q. Twelve cents; Miracle Whip, fifty cents?
A. No, I don't think so.
[fol. 427] Q. What was your price on Miracle Whip?
A. Fifty-three.
Q. What does I.G.A. recommend,—is Miracle Whip a traffic item?
A. Yes.
Q. What does the I.G.A. recommend on that date?
A. I am not sure.
Q. Would you care to look?
A. Fifty-three.
Q. Fifty-three, and that was your price?
A. I am pretty sure it was.

By Mr. Swinford:

We offer in evidence Defendant's Exhibit Number 13.

By the Court:

It will be admitted.

By Mr. Swinford:

We offer in evidence Defendant's Exhibit Number 6, and ask leave of the Court to photostat the pages wherein the articles questioned appear, and withdraw the original and return it to counsel.

By Mr. Miskovsky:

Yes, but who is going to do that; are you going to furnish them?

[fol. 428] By Mr. Swinford:

Yes, sir, we will furnish them.

By Mr. Miskovsky:

All right, lets have this understanding, though; why don't you have photostated what you want in the record, and get that back, and then we will have no objection to you putting any one or all parts into the record. But we don't want this in, we want that returned under the agreement that we let you have them with, because those are office file copies, and we are obliged to return them.

By the Court:

All right; we will have it that way.

* * * * * * *

Cross examination.

By Mr. Miskovsky:

Question: Mr. Speed, when you were questioned earlier about stamps, it was not clear to me, and I wish you would [fol. 429] clarify it, your practice as to how stamps are given on accounts paid before the 10th of the following month, and the nature of the service charge allowed by you, and distinguishing this from discount, as you carry it on your gooks; will you tell the Court about that so that we will have that clear?

By the Witness:

Answer: Well, if the bills,—there is a two per cent service charge on all charge accounts, and if a bill is paid by the 10th of the following month, they get S & H Green Stamps, and if not, if the bill is delinquent, they pay two per cent on top of that.

Q. Yes, sir?

A. If the bill is carried over another month.

Q. Yes, sir, you have a two per cent charge on all overdue accounts, in addition to the regular service charge that you have on all accounts, is that correct,—charge accounts?

A. Yes, sir,—thirty days old, yes.

Q. You do not give any S & H stamps with any past due accounts?

A. No, sir.

Q. But do give S & H stamps on all accounts that are paid before the 10th of the month?

A. Yes.

[fol. 430] Q. Will you clear up, for me, the facts about the cost of extra stamps on the double stamp days, before it was voluntarily discontinued?

A. The stamps cost me at the rate of two per cent. I paid the amount of $14.00 for a pad of 5,000, and each quarter there is an adjustment period on the basis of the stamps and the volume of business that I did on single stamps. The double stamps, I paid $14.00 a pad for them; I had to stand that myself.

Q. Yes, sir, in other words, you purchased the stamps at your regular price, and when you gave double stamps, it was simply on the basis of the same price that you paid on Wednesday, is that right?

A. Yes, sir.

Q. Now then, yours is an I.G.A. store, is that correct?

A. That is right, two of my stores are.

Q. Yes, sir, you have testified that that means Independent Grocers Alliance?

A. Yes.

Q. The I.G.A. stores are located all over Oklahoma City, is that right?

A. Yes.

Q. You are the only I.G.A. store in Oklahoma City-Midwest City area that had or gave S & H Green Stamps with cash purchases or with credit purchases paid on or [fol. 431] before the 10th day of the month immediately following the purchase, the month's purchase, is that right?

A. Yes.

Q. It has been shown here, I believe,—no,—Mr. Speed, I believe it has been testified, or shown, that some prices by I.G.A., that some were advertised at less than cost to the retailer as defined in the Act,—less than the minimum provided therein, is that correct?

A. Yes.

Q. And that you sold some items at less than the minimum provided by the Oklahoma Unfair Sales Act, is that correct?

A. Yes, sir.

Q. That was between the 15th day of September and

the 25th day of October, and after the 15th day of September, 1954, is that correct?

A. Yes.

Q. And was occasioned by—

• • • • • • •

Q. —occasioned by,—was it occasioned by the price cut initiated by the Safeway chain, defendant here?

• • • • • • •

[fol. 432] Q. Why were the items, after September the 15th, and before the 25th of October, 1954, why were the items testified about advertised for sale, offered for sale, and sold, at less than the minimum provided in the Oklahoma Unfair Sales Act?

• • • • • • •

Q. Go ahead and answer it, Mr. Speed?

A. To meet competition; we met those prices in order to meet competition.

Q. Whose competition?

[fol. 433] A. The chain stores,—Safeway.

Q. Who do you mean by 'the chain stores'?

A. The Safeway's ads.

Q. The Safeway's ads; at this time had Standard and Humpty Dumpty met the prices that were set by Safeway that triggered this price war?

A. I am not sure.

• • • • • • •

Q. All right, I will ask you this; after Judge VanMeter ruled on the application for a temporary injunction, and before September the 15th, 1954, did Safeway advertise for sale, offer for sale or sell, to your knowledge, within the Oklahoma City-Midwest City area, any merchandise below the minimum provided in the Unfair Sales Act?

• • • • • • •

[fol. 434] Q. Let me ask you this, Mr. Speed; I will ask you this question; do you know if Safeway, to your knowledge, advertised for sale, offered for sale or sold any merchandise,—advertised any merchandise in The Daily Oklahoman or the Oklahoma City Times, at less than cost

to the retailer as defined in the Oklahoma Unfair Sales Act, after they were—after Judge VanMeter ruled on the application for a temporary injunction, but before September the 15th, 1954?

. . . . . .

[fol. 435] A. Well I don't know,—I am not sure.

Q. You don't know?

[fol. 436] A. No.

Q. I will ask you this question; in your experience in the grocery practice, if prices are reduced,—well, I think that is obvious,—oh, I believe that is all.

. . . . . .

[fol. 437] DISCUSSION AS TO WITNESSES AND EXHIBITS

By Mr. Crowe:

. . . . . .

I would like, Judge, to inquire, before we adjourn; I have here Defendant's Exhibits 5-a to 5-u; that is a price check, with stamps and cash register receipts attached, which was made on September the 8th, 1954. Three of them, three of those sheets, Mr. Speed admits are correct, that he sold for those prices. I have three ladies here that did the checking and can identify most of the rest of them.

. . . . . .

[fol. 439] By Mr. Crowe:

Your Honor, this is a check that was made on September the 8th, and it is prices that Safeway met on the 15th, in that ad; that is what that is.

By Mr. Miskovsky:

If your Honor please, we will admit that if these witnesses were called they would testify that these purchases were made on the dates indicated and at the prices indicated, and from the merchants specified thereon, and the tokens thereto attached were given. Beyond that, we won't stipulate, and subject to checks that we may make during the course of the trial.

. . . . . .

[fol. 440] By Mr. Crowe:

All right, with that stipulation, I offer in evidence Defendant's Exhibits 4-a to 5-u.

By the Court:

All right, they will be admitted.

* * * * * * *

STIPULATION OF COUNSEL

By Mr. Beshar:

We would like to put a stipulation in the record at this time, your Honor. (Immediately upon recess).

By the Court:

Very well.

By Mr. Beshar:

The Plaintiff will stipulate that various merchants in the Oklahoma City area sold grocery items at a mark-up above the statutory six and three-quarters per cent, and that they issued trading stamps with the purchases; that if one were to accept the theory that the value of trading stamps were a discount in price, then the mark-up on some of these items would be less than cost to the retailer as [fol. 441] defined in the Act.

* * * * * * *

[fol. 448] By Mr. Miskovsky:

We will submit this stipulation; may it be adopted?

By Mr. Crowe:

Yes, sir, make it a part of the record.

By the Court:

Yes. Maybe you had better mark it and offer it as an Exhibit.

By Mr. Miskovsky:

Yes; Plaintiff now offers Plaintiff's Exhibit G in evidence, being said stipulation.

By the Court:

Very well, it will be admitted.

STIPULATION AS TO EXHIBITS

By Mr. Crowe:

Yes, sir, it is agreed that Plaintiff's Exhibit G is a stipulation entered into by the parties,—between the parties, and may be made a part of the record, as a stipulation.

By Mr. Miskovsky:

Yes, sir.

(Said Stipulation being as follows):

It is Stipulated and Agreed that as to Exhibits "C" to "O", inclusive, to the Defendant's Cross-Petition, that the members of the Thrif-T-Wise group and the I.G.A. group, Safeway, Standard Humpty-Dumpty, Kiespert, Dickey, and others mentioned in the exhibits in the Oklahoma City area, on the days mentioned in the exhibits, sold the articles [fol. 449] of merchandise set forth therein at approximately the prices in said exhibits set opposite the articles; and that the price at which the members of the Thrif-T-Wise organization and the I.G.A. organization, and the others mentioned in the exhibits sold the items mentioned in those exhibits were each and all at or near the minimum price at which such articles could be sold under the Oklahoma Unfair Sales Act; that on the dates in question, on Wednesdays, the members of the Thrif-T-Wise organization and the plaintiff, Speed, gave double stamps with the sale of such items and on every other day in the week they gave single trading stamps with such minimum priced items; if the stamps, valued at not less than 2.5%, had the effect of reducing the sales price at which the items were sold, then the resultant sales prices were less than the minimum allowed by the Oklahoma Unfair Sales Act.

By Mr. Crowe:

It is further Stipulated and Agreed that as to the articles of merchandise shown on Exhibit "B" to Plaintiff's Petition, the prices for which the defendant, Safeway, sold said articles, as shown, were reduced approximately 5.6% on Wednesdays, and 2.8% on other days of the week, below the shelf prices charged by the Oklahoma City members of the Thrif-T-Wise group and plaintiff, Speed, and Stockton, and members of the I.G.A. group, in the Oklahoma City area. It is further Stipulated and Agreed, that as to the items of merchandise, as shown on Exhibit "B" to the Plaintiff's [fol. 450] Petition, and reflecting the sales of merchandise in the towns of Enid, Shawnee, Norman, and Tulsa, Oklahoma, that the prices charged by the defendant, Safeway, were equivalent to, and equally low priced of one or more of its competitors established on a prior date in the town in which said articles were sold, at the prices therein set forth; and such sales prices were below the "cost to the retailer" as defined by the Oklahoma Unfair Sales Act. It is understood and agreed that the question of "intent or knowledge", is not intended to be covered by the foregoing stipulation.

By the Court:

Thank you, gentlemen.

By Mr. Crowe:

Now if the Court please, I would like to request plaintiff to waive identification of a statement made by the S & H Green Stamp Company on the date of March 15th, 1955, in an article which I have submitted to Mr. Lane for examination.

By Mr. Lane:

Before you read the statement, let me tell you that I will not consent to the statement going into the record, unless the whole paper goes into the record, and my reason for stating that is that that paper is not something issued by any party to this action, but issued by the Sperry and

Hutchinson Company. I happen to be here because of Sperry and Hutchinson's interest in this law suit, and I will take the position that if any part of that paper is to [fol. 451] go into evidence, then the whole of it should go into evidence.

* * * * * * *

By Mr. Crowe:

It is Stipulated and Agreed by and between the parties hereto that the instrument marked Defendant's Exhibit No. 14 is a statement made by the Sperry and Hutchinson Trading Company under date of March 15th, 1955; now that gives the exhibit number; is that right?

By Mr. Lane:

Yes, sir.

By Mr. Crowe:

Now if the Court please, it is an admission against interest; the defendant desires to offer in evidence the fol- [fol. 452] lowing statement from Defendant's Exhibit No. 14, to-wit:

By Mr. Lane:

I object to it, your Honor, to the reading into the record of the statement unless the whole exhibit goes in.

By the Court:

Lets see what you are talking about. (Mr. Crowe hands Exhibit No. 14 to Court).

By Mr. Crowe:

There is what I was going to read (pointing out on exhibit). I am offering it, Judge, as an admission against interest,—that portion of it as an admission against interest; the rest of it would be self-serving, probably not incompetent, but I think the defendant would have the right to offer any admissions against interest that the ever made in writing, or otherwise. They admit that it is theirs.

By Mr. Watts:

Well I doubt that; they are not a party to the law suit.

By the Court:

It may be a statement made by the S & H people, but it has nothing to do with this.

By Mr. Crowe:

Well, the S & H people are defending it,—I mean they are all here,—they are furnishing the talent, and nobody is kidding about the question as to whether or not this is a [fol. 453] fight of the S & H Company on trading stamps,—there is no question about that,—nobody has any doubt about that being the issue.

By Mr. Lane:

There is no question about but what the Sperry and Hutchinson Company has a financial interest in the law suit.

By Mr. Crowe:

All right, if they have a financial interest in the law suit, then that is an admission against interest.

By Mr. Lane:

But there is no question, also, that Sperry and Hutchison is not a party to this action, and the rule of admission against interest only goes to the parties.

By the Court:

I think the objection is well taken, and will be sustained.

By Mr. Crowe:

Well I want to dictate into the record what it is, then. We offer, as an admission against interest, the statement—

By Mr. Lane:

Now your Honor, I object to that, because he obviously is going to put into the record the very thing which your Honor has sustained an objection to.

By the Court:

They can make a record of it.

[fol. 454] By Mr. Lane:

But your Honor, you have sustained the objection; he has offered this exhibit, and you sustained an objection to it.

By the Court:

I can refuse to consider it, but he can make his record on it, and if the Supreme Court says it should have been in, it is their business.

By Mr. Miskovsky:

Is it necessary to read it; can't he indicate the part of it that he referred to?

By Mr. Crowe:

No, I want to make my record.

By the Court:

He has a right to do that.

OFFER IN EVIDENCE

By Mr. Crowe:

The defendant offers in evidence, as an admission against interest by the Sperry and Hutchinson trading stamp company, from a statement made by it under date of March 15th, 1955, the following, as disclosed by Exhibit No. 14, the identification of which has been waived, the following: "Trading stamps are not advertising—they are something to be advertised—just like ample parking space, air conditioning, an attractive store, and attractive prices". Now I make that offer.

[fol. 455] By Mr. Lane:

Your Honor, may I then enter an exception to what Mr. Crowe has read, and in view of the fact that what Mr.

Crowe has read is now in the record, we wish to offer the balance of the statement.

By the Court:

Your objection will be sustained.

By Mr. Crowe:

Give us an exception.

By Mr. Miskovsky:

We make an offer of the balance of the exhibit, for the record, if your Honor please.

By Mr. Crowe:

To which we object for the reason that it is incompetent, irrelevant and immaterial, and self-serving.

By the Court:

Sustained.

By Mr. Miskovsky:

Let the record show then that we offer, as Mr. Crowe did, for the record, the balance of this exhibit, and it speaks for itself.

By Mr. Crowe:

To which the defendant objects because it is incompetent, and self-serving.

By the Court:

Sustained.

* * * * * * *

[fol. 456] DISCUSSION AS TO STIPULATIONS

By Mr. Crowe:

* * * * * * *

Now if the Court please, I would like a stipulation from the plaintiff,—that I think they agreed on Sunday; that during the time that the Thrif-T-Wise group of merchants, testified to by Mr. McCarty yesterday, were giving trading stamps, that none of said Thrif-T-Wise merchants sold any merchandise except for cash.

By Mr. Miskovsky:

I don't know, your Honor, how many of the Thrif-T-Wise merchants are strictly cash, but it is my understanding that practically all of them are doing a cash and carry business. With that exception, that there may be one or two, like Speed, that may be doing some credit and some cash, but in a general way I believe that all of the Thrif-T-Wise merchants are cash merchants.

* * * * * * *

[fol. 457] For example, our store, Miskovsky Foods, are strictly a cash and carry store; as to the other Thrif-T-Wise merchants, I believe that Lakeside 1 and 2, and some of the others, are cash and carry, and some of them may not do a one hundred per cent cash and carry business. They may have charge accounts, as Speed does. Now then, if he desire to know specifically which ones are one hundred per cent cash and carry, and which ones may have a credit and cash combined business, then I will have to inquire and submit that to you afterwards.

* * * * * * *

[fol. 458] W. A. CHRISTENSEN, being called as a witness by the defendant herein, after being first duly sworn upon oath to testify the truth, the whole truth and nothing but the truth, upon interrogation by counsel, testified as follows:

Direct examination.

By Mr. Crowe:

Question: State your name, please sir?

By the Witness:

Answer: W. A. Christensen.

Q. What is your position with Safeway stores?

A. Division Manager.

Q. As such, do you have charge of, or the management of Safeway in all of the State of Oklahoma?

A. Yes, sir.

[fol. 459] Q. And is Arkansas also under your jurisdiction?

A. Yes, sir.

Q. How long have you been Division Manager of the Safeway Stores in Oklahoma?

A. Seven years.

Q. You came here in 1948?

A. Yes, sir.

Q. What has been your prior connection with Safeway?

A. Well, I have served in almost every capacity, I guess, that the Company has, up to my present position.

Q. Would you tell us, generally, what it was and where it was, and the length of time?

A. I started working for the Company in 1923, in Pocatello, Idaho, as what we refer to as a food clerk. I later became a store manager,—

Q. Where?

A. In Denver, Colorado, and then from there I was transferred to Colorado Springs, still in the capacity of a store manager, and from there to Alliance, New Braska, Scotts Bluff, Nebraska, and from there I was transferred to Denver, Colorado as a Supervisor in charge of a group

of stores. Later I became District Manager of the Waco district, and in 1936 I was transferred to Arkansas as District Manager of the Arkansas operations. Still in Arkansas, I became Division Manager of that operation. In about 1946 I was transferred to Oklahoma City as [fol. 460] Division Manager in charge of the Oklahoma operations, in 1948, and beginning with the first of this year I also took charge of the Arkansas operations along with the operations in Oklahoma.

Q. Mr. Christensen, have you been in the grocery business during all of that period of time then?

A. Yes, sir.

Q. How many years experience have you had as a merchandiser of groceries?

A. Well, even from the beginning for the Company, from 1923 to the present date.

Q. Now you were Division Manager in Oklahoma City in 1954 then, and are now?

A. That is correct.

Q. Mr. Christensen, do you know whether or not trading stamps are now being used in this area by merchants in the grocery business?

A. Yes, sir.

Q. When did your attention first come to the matter of the significance of trading stamps in the grocery business, about when?

A. In the fall of 1952.

Q. Had they been any competitive problem up until that time?

A. We hadn't recognized them as such, if they were.

[fol. 461] Q. You heard Mr. McCarty say yesterday that Speed and the Thrif-T-Wise group all took on trading stamps in 1952, didn't you?

A. I think that is right.

Q. Did you notice any advertising in 1952 of the trading stamps,—did that come to your attention?

A. Yes, there were some ads, I think some good sized ads taken out, advertising S & H Green trading stamps in the Fall of 1952.

Q. Now would you tell the Court what amount of trading stamps were being given in 1952, if there was any dif-

ference in the day of the week and the number of stamps given by the merchants?

A. In the Fall of 1952, double stamps were being given by some trading stamp merchants on Wednesday, and single stamps other days of the week.

Q. Now after it came to your attention, what, if anything did you do with reference to this trading stamp competition?

A. Well first, after we noticed the ads, we began to observe the trading stamp merchants who were giving stamps to determine what value the stamps might be to the merchants, and whether or not they increased traffic and diverted trade from other merchants to those who were giving stamps.

Q. Did you seek any advice from your attorneys?

[fol. 462] A. We did, after we had verified the fact that they were—

* * * * * * *

Q. Did you seek and receive an opinion from your attorneys as to whether or not trading stamps were a reduction in the price of the article with which they were issued?

A. Yes.

Q. When was that, approximately?

A. Well, that was late, probably as late as December, in 1952.

Q. Were you advised as to their opinion with reference to the matter?

A. Yes, we were.

Q. What were you advised as to whether in their opinion trading stamps reduced the price of merchandise when issued with them, or when stamps were issued with such merchandise?

A. We received information from you that in your opinion the giving of trading stamps resulted in a reduction of the retail price.

Q. Now did you thereafter cause any survey to be made [fol. 463] to determine the effect of trading stamps?

A. Yes, to confirm our opinion that the giving of trading stamps were diverting the trade from those merchants who were not giving stamps, we made a survey or customer count,—on Wednesdays, of a competitive store, at the same

time making a survey of our own store on customers, and found that—

Q. Now wait just a minute; you did make it?

A. Yes.

Q. Now I hand you what has been marked Defendant's Exhibit No. 15, and ask you what that is?

* * * * * * *

Q. What is that Exhibit No. 15?

A. This Exhibit No. 15 shows that—

Q. No,—no, just what is it; is that a survey made of Norman, Oklahoma?

[fol. 464] A. That is a survey made of Norman, Oklahoma.

Q. And who made it?

A. Mr. Mitchell.

Q. And who is he?

A. He is a staff member in my office.

Q. Did he make that at your direction and under your supervision?

A. That is right.

Q. And when was it made, Mr. Christensen, about?

A. Oh, it was made in April, 1953.

Q. And is this a photostatic copy of the results of that survey?

A. It is.

Q. Was it turned over to you after it was completed?

A. Yes, sir.

By Mr. Crowe:

All right, we desire to offer it in evidence, Defendant's Exhibit No. 15.

Q. Is that Exhibit 15 in Mr. Mitchell's handwriting?

A. That is correct.

By Mr. Crowe:

Any objection to it?

By Mr. Watts:

No.

By Mr. Crowe:

Will Exhibit No. 15 be admitted then?

[fol. 465] By the Court:

Yes, Defendant's Exhibit No. 15 will be admitted.

• • • • • • •

[fol. 466] Q. Now Mr. Christensen, what does that exhibit show to you as to the effect of double stamps on attracting customers on Wednesday, as compared to other days when single stamps were given?

A. I think it illustrates, beyond doubt, that—

• • • • • • •

[fol. 467] Q. What construction, as business manager of the Safeway, did you place upon that survey when it was turned over to you?

• • • • • • • •

Q. All right, Mr. Christensen, go ahead?

[fol. 468] A. Well I think this exhibit illustrates, beyond doubt, that the giving of double trading stamps on Wednesdays diverts trade.

• • • • • • • •

Q. After you had received the report of that customer count, shown in Exhibit No. 15, did you call it to the attention of the principal office of Safeway at Oakland?

A. Yes, I discussed it briefly with the President of our Company at that time.

Q. I will ask you whether or not after that was discussed with Mr. Warren by you, if another survey was made?

• • • • • • •

[fol. 469] Q. You say you did discuss with Mr. Warren this Exhibit No. 15?

A. Yes.

Q. And when was it, with reference to the time the survey was made, in some area of time, as near as you remember?

A. It was very shortly after this survey was made.

Q. And how did you discuss it with him?

By Mr. Miskovsky:

Wait a minute,—is the date of the survey indicated on the Exhibit?

A. Yes, sir.

By Mr. Miskovsky:

What is the date?

A. The date is 4/15; 4/23; and 4/28.

By Mr. Miskovsky:

Was it after 4/28?

A. Yes.

Q. All right, how?

A. By long distance telephone.

A. You were in Oklahoma City and he was in Oakland, is that right?

A. That is right.

Q. Now Mr. Christensen, after this survey was made in April, by Mr. Mitchell, Exhibit No. 15, was there another survey made of the import,—or purporting to trading [fol. 470] stamps at Norman, Oklahoma?

A. Yes, sir.

Q. I hand you what has been marked as Defendant's Exhibit No. 16, and ask you to state what that is?

A. This is a survey made by Oxford Business Surveys, to determine the importance of of trading stamps in Norman, Oklahoma.

Q. When was it made? —Approximately?

A. September 1, 1953.

Q. That was after the check made by Mitchell?

A. Yes, sir.

Q. Who is the Oxford Business Surveys?

A. The Oxford Business Surveys is a company who makes surveys for Safeway,—all kinds of business surveys.

By Mr. Miskovsky:

Is it a subsidiary of Safeway?

Q. Was that survey made,—at whose request, or direction was that survey made, Mr. Christensen?

A. This survey was made at the direction of Mr. Warren.

Q. After it was completed, was it submitted to you, a copy of it submitted to you? Furnished to you?

A. Yes, a copy of it was submitted to me.

By Mr. Crowe:

We now desire to submit in evidence, Defendant's Exhibit No. 16.

[fol. 471] By Mr. Miskovsky:

Are you offering this?

By Mr. Crowe:

Yes, sir.

By Mr. Miskovsky:

If your Honor please, we object to the exhibit for the reason that it is a self-serving declaration, and for the further reason, it is hearsay; that the person or persons who purportedly covered the subject-matter involved should testify about it and give us an opportunity to cross examine them. It merely states a conclusion, and we have no opportunity to cross examine them about it.

By the Court:

The objection will be sustained.

By Mr. Crowe:

Show our exceptions.

Q. Mr. Christensen, what action, if any,—other action, if any, had Safeway taken in April, 1954, in an effort to combat the single and double trading stamp competition in Oklahoma City?

• • • • • • •

[fol. 472] A. Well, I discussed with you the—

Q. Now wait just a minute, before you get to that; let me direct the question in another form.

What, if anything, did Safeway do in 1954 with reference to the prices for which it was selling its groceries, in an attempt to meet this trading stamp competition?

A. Well along about that time we reduced a number of prices to see if it wouldn't off-set the promotions that were

being run by the trading stamp merchants on S & H Green trading stamps.

• • • • • • •

Q. Now on what type of items were prices reduced at that time?

[fol. 473] A. Prices other than which we have been referring to here as traffic items.

Q. Were those prices that you did reduce on prices such as reduced them below the minimum required by the Oklahoma Unfair Sales Act?

• • • • • • •

Q. Would you answer the question?

A. Repeat it, please.

Q. I say, the reduction of prices that were made in April, 1954, did it have the effect of reducing it—the prices, below the statutory minimum of the Unfair Sales Act?

A. No, it didn't.

Q. Do you know approximately how many items of merchandise it was upon which you reduced the prices then?

A. Approximately two hundred.

Q. Now how did Safeway's prices, at that time, compare, on non-traffic items, with the prices of the Thrif-T-Wise and I.G.A. stores, and your competitors in Oklahoma City?

A. Generally speaking, our prices at that time, after the [fol. 474] reduction was made that I just spoke of, our prices were lower on non-traffic items.

Q. Lower than their prices?

A. Yes.

Q. I will ask you whether or not the reduction by Safeway of the prices on non-traffic items, in April, 1954, of approximately two hundred items,—

• • • • • • •

Q. Yes, at the time you made this reduction of prices on non-traffic items in Oklahoma City to combat the competition of trading stamps in April of 1954, did you notice that it had any effect of preventing a division of trade by the trading stamps?

• • • • • • •

[fol. 475] Q. All right, what was the effect, insofar as trading stamp competition was concerned, by the reduction of these prices in April, 1954, in Oklahoma City, on non-traffic items?

A. It seemed to have no appreciable effect, on our volume,

Q. Now I hand you what has been marked Defendant's Exhibit No. 17, and ask you to examine it and tell us what it is?

A. This Exhibit is the result of purchses that were made at stores where trading stamps were being given.

Q. When was it made?

A. At different dates here.

Q. All right, go ahead and state, if you want to, the order in which the purchases were made.

* * * * * * *

[fol. 476] By Mr. Crowe:

Question: Mr. Christensen, by whom were those purchases made, as shown by those certificates?

A. They were made by Mr. Mitchell, of my office, and I believe Mr. McCloud.

Q. He is the price maker in Oklahoma City?

A. Yes.

Q. Now was that Exhibit No. 17, I mean the various records of the purchases made, were they signed by those who bought them?

A. Yes.

Q. And I will ask you if it is a fact that attached to the purchases from each store is a cash register receipt issued by that store, showing that they did sell the items?

A. That is correct.

Q. Is that true as to each one of them?

A. In each instance, yes.

Q. Was that survey made at your direction?

A. Yes, sir.

Q. And what was the date of it?

A. Well, now lets see,—well, the date is on the cash [fol. 477] register receipts anyway,—it says April 16th.

Q. And some of them may be April 17th; was that 1954?

A. April the 16th, 17th,—I am taking these dates from

the cash register receipts,—April 17th, April 17th, April 17th, April 17th, and April 17th, and April 16th.

By Mr. Crowe:

I desire to offer in evidence Defendant's Exhibit No. 17.

By Mr. Miskovsky:

What is it,—let me see it.

By the Court:

I think it is another list of purchases, similar to the one you had yesterday.

The exhibit will be admitted.

Q. Now Mr. Christensen, in connection with those purchases which were made in April, 1954, what was done with them after they were completed, those check purchases,—do you know whether or not they were submitted to the County Attorney of this county?

A. That was the primary purpose of the survey, and then they were turned over to you, and I believe you turned them over to the County Attorney.

* * * * * * * *

[fol. 478] By Mr. Crowe:

I would like to offer in evidence Defendant's Exhibit No. 18, the identification of which is waived, for the purpose of showing the submission of the information contained in Exhibit No. 17 to the County Attorney of Oklahoma County.

By Mr. Miskovsky:

We object to the letter, written by Mr. Crowe to the County Attorney, as being a self-serving declaration, and wholly irrelevant, incompetent and immaterial.

By the Court:

Objection sustained.

[fol. 480] Q. Now Mr. Christensen, were you advised as to the position of the County Attorney with reference to this matter, were you advised as to his position?

A. Yes, after you had discussed it with the County Attorney you told me that the County Attorney preferred to do nothing about it.

Q. Now do you remember about when it was—

By Mr. Miskovsky:

Now just a minute, we object to the last to the last [fol. 481] statement, and ask that it be stricken,—the County Attorney,—I believe that would be hearsay.

By the Court:

It was not responsive to the question. The question could have been answered "yes" or "no".

By Mr. Crowe:

Yes,—

Q. Now Mr. Christensen, do you know about when it was that you learned that the County Attorney would not take action with reference to the matters submitted in Exhibit No. 17,—the month?

. . . . . .

Q. Well, I will just ask you for the time; do you remember about when it was that you learned the conclusion of the County Attorney?

. . . . . .

[fol. 482] Q. I hand you what has been marked Defendant's Exhibit No. 19, and ask you to examine it and state what that is?

[fol. 483] A. This is a similar survey.

Q. By whom?

A. Mitchell and John McCloud.

Q. What date?

A. July the 15th, 1954.

Q. July the 15th,—now is there attached to that survey the cash register receipts and trading stamps that were

issued with the purchases reflected by that exhibit?

A. Yes.

Q. Mr. McCloud was one of those who made purchases heretofore?

A. Yes.

By Mr. Crowe:

I offer in evidence Defendant's Exhibit No. 19.

By the Court:

Has counsel seen it?

By Mr. Miskovsky:

Just a minute,—I haven't seen it; is that a new one?

By Mr. Crowe:

Well, these have been submitted back and forth before, between us. There don't seem to be any objection; may it be admitted?

By the Court:

It will be admitted.

[fol. 484] Q. Now then, this information contained on Exhibit No. 19 was assembled on July 15th, was it not, 1954?

A. That is right.

Q. Now I call your attention to Plaintiff's Exhibit "D", which has already been received in evidence here, which is an advertisement run by Safeway on Wednesday, July the 21st, 1954, is that right?

A. Yes, sir.

Q. I will ask you whether or not the computation that was contained in that ad,—the prices,—whether it was based upon information gathered in that survey on July the 15th?

A. Yes.

Q. Now then, did you authorize the running of that ad on July the 21st, 1954?

A. I did.

Q. What was the purpose of the reduction in prices contained in that ad?

A. To enable us to be competitive with trading stamp merchants who were giving trading stamps along with minimum priced articles.

Q. Do you know whether those prices were reduced to meet single or double stamps?

A. Some of the prices in this ad were reduced to meet the giving of double stamps.

[fol. 485] Q. The evidence shows that these Thrif-T-Wise and merchants,—Speed, were giving double stamps on Wednesday of each week, from March, 1952, to March, '55; will you examine the calendar and tell us,—well I believe the ad shows that it was on Wednesday, doesn't it?

A. Oh, yes,—yes, Wednesday, July 21, 1954.

Q. Well now then what was the intention of the Safeway Stores, when that ad was run?

* * * * * * *

Q. Did the Safeway Stores have any other intent except to meet the trading stamp competition, for those reductions?

A. No, sir, that is all.

* * * * * * *

Q. I will ask you, Mr. Christensen, whether in the running of that ad—

* * * * * * *

[fol. 486] By Mr. Crowe:

Question: Mr. Christensen, you have testified that the ad run by Safeway reduced the prices on July the 21st, 1954, was run for the purpose of meeting trading stamp competition; now I will ask you whether or not, in your opinion, as a grocer, from experience since 1923 in the business, the advertising and selling of articles at a price equal to that of a competitor, on the same article, would tend to divert trade from such competitor?

By the Witness:

Answer: No, sir, it does not.

Q. I will ask you whether or not it would tend to lessen the competition?

[fol. 487] A. No, I think it would increase competition.

Q. I will ask you whether or not Safeway had any intention, when that ad was run on July the 21st, 1954, to lessen competition or to create a monopoly in the grocery business?

A. No, we had no such intention.

Q. I will ask you if you had any intention to divert trade from a competitor, or to injury any competitor?

A. No, our full purpose was to be competitive, with the trading stamp merchants.

Q. Now I will ask you whether or not, in your opinion as a grocer, the meeting of competition by Safeway by that ad, would have the result or effect of deceiving any person or purchaser or prospective purchaser of goods?

A. I don't see how it possibly could.

Q. Would it tend to substantially lessen competition?

A. No, it couldn't reduce competition, it couldn't lessen it any.

Q. Would it unreasonably restrain trade, in your opinion?

A. No.

Q. And would it have the result of tending to create a monopoly?

A. No, it would not.

Q. Now Mr. Christensen, did you hear Mr. Kamp testify yesterday, that in his opinion the mere meeting of a lower [fol. 488] price of a competitor would not create a price war?

* * * * * * *

Q. Mr. Christensen, I will ask you later whether or not in your opinion the mere meeting of prices of competitors in an area would tend to create a price war.

A. No, it would not.

Q. Now, at the time you ran this ad in July of 1954, about how long had Miskovskys' and Carson's, and Scott's, [fol. 489] and the other Thrif-T-Wise merchants, and Louie Speed, the plaintiff, been given double trading stamps with traffic items which they were selling at the statutory minimum under the Unfair Sales Act?

A. As I recall, their first ads appeared in late 1952.

Q. During all of that time had Safeway been selling the traffic items, dollar-wise, at a price of about the statutory minimum?

A. That is right, and competitive.

Q. Had your competitors, the Thrift-Wise green trading stamp group, in selling traffic items, had they been selling at or near the statutory minimum?

A. Yes, they had.

Q. And in addition to that, they had been giving the trading stamps?

A. That is correct.

Q. On those items?

A. That is correct.

Q. Now as to the items which were advertised on July 21, 1954, were those what we regard as traffic items?

A. Yes, most of them were.

Q. Did you give any instructions to anyone as to the—what action should be taken at the time that ad was run, with reference to a reduction of traffic item prices?

A. Yes, I instructed our Zone Manager,—

Q. Who was that?

[fol. 490] A. Earl Templeman.

Q. What were your instructions to him?

A. My instructions to him were that he should reduce the price of the traffic items on which we had previously made a survey and purchased those items, the ones we had cash register receipts and trading stamps where we made those purchases, and reduce the price on certain traffic items sufficiently to off-set the true value of the trading stamps.

Q. Now did you,—

A. And advertise them accordingly.

Q. And to whom did you leave the details of making those prices and advertising?

A. All the instructions were given to Mr. Templeman.

Q. To Mr. Templeman; now I will ask you, Mr. Christensen, did you have information as to what merchants who were giving trading stamps, were paying for a book of 5,000 green stamps?

A. Yes.

Q. What was that?

A. They were paying $14.00 for 5,000 stamps.

Q. And do you know what percentage that represented, of the merchandise with which they were sold?

A. If they were to give stamps with all their sales, it would represent 2.8% of the sales.

Q. All right, then—

[fol. 491] A. Now that is on days when they are only giving single stamps.

Q. And on the day that double stamps were given, what would that represent? —as the value of stamps?

A. It would represent 5.6% of their sales.

Q. In the ad which was published in July of 1954, were the reductions made at those rates?

A. That is correct.

Q. Mr. Christensen, I hand you what has been marked, for identification, as Defendant's Exhibit No. 1, and ask you to state whether you know what that is?

A. Yes, I know what it is.

Q. What is it, generally?

A. Well, it is an exhibit which was prepared to determine the true value of S & H Green Trading Stamps.

Q. Was that prepared by Safeway?

A. Yes.

Q. And could you tell us, in general, what the information was taken from?

A. Well this exhibit,—

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[fol. 492] Q. Well Mr. Christensen, where was that computation made; was that made by the Safeway Stores?

A. That is right, in the Safeway office.

Q. And was it made at Oakland, California?

A. Yes.

Q. And was it submitted to you, as Division Manager here in Oklahoma City?

A. That is right.

Q. And was it a part of the business records of Safeway, as relating to this trading stamp issue?

A. Yes.

Q. And it is now a part of the business records?

A. Yes, sir.

Q. And is that a part of the information upon which you determined the value of trading stamps?

A. It is.

• • • • • • •

By Mr. Miskovsky:

Question: Mr. Christensen, was this instrument, did you say prepared in Oakland?

[fol. 493] By the Witness:

Answer: Yes, sir.

Q. Do you know who prepared it there?

A. I don't know the individual.

Q. Did you have anything to do with the preparation of it?

A. Only in that I wanted to know what the true value of the S & H stamps were.

Q. You made an inquiry, and that was made there?

A. That is correct.

Q. And you are not in a position to testify, or answer on cross examination, what factors went into the consideration of that, other than what is reflected there, is that correct?

A. No, that isn't correct.

Q. Well did you make any of the computations?

A. I did not, I did not make any of the computations, but they have been verified by me.

By Mr. Crowe:

Now wait just a minute,—if the Court please, I haven't offered it yet. I desire to offer in evidence Defendant's Exhibit No. 1, not for the purpose of proving the correctness of the information therein listed, nor of the calculations, but, as a part of the information which Mr. Christen-

[fol. 494] sen had when he acted upon this matter of reduction of prices to meet trading stamp competition, and as the bearing it may have upon the good faith of Safeway in the reductions which were made, as tending to show that he did believe that was the value of the trading

stamps,—and not to prove that it was, but merely to show their intent.

• • • • • • •

Q. But as a result of that study, Mr. Christensen, did you conclude that the value of these stamps, to the purchaser, was the same as the results shown here, of 2.8%?

A. That is right.

[fol. 495] By Mr. Miskovsky:

Just a minute, Mr. Crowe; I would like to make a further objection, if your Honor please, so the record will show it. My further objection to the admission of this instrument is, that we have,—we challenge the accuracy of it, and we have no opportunity to cross examine the persons who it,—and

By Mr. Crowe:

Well Mr. Miskovsky, you may not have heard me, but I offered it only,—I did not offer it as proof of the facts contained in the exhibit.

By the Court:

Yes, I will admit it on that statement.

Q. Now Mr. Christensen, after this ad of July 21, 1954, that was run in the paper by Safeway, was a suit filed by the Retail Grocers Association here against Safeway?

A. Yes, sir.

Q. Do you remember whether a restraining order was issued?

A. Yes, sir.

Q. And do you know about the date of it?

A. Well, it was immediately after the ad was ran.

Q. Well the record will show the date,—I believe it [fol. 496] was September the 25th. Now during what period of time, then, was Safeway under a restraining order in the District Court of Oklahoma County with reference to this matter of meeting competition of trading stamps?

• • • • • • •

A. Safeway was under restraining order from a date shortly after this ad of July 21st was run, until a temporary

hearing on the injunction had been completed here in Judge VanMeter's court.

Q. Yes, and I believe on August the 21st, or August the 31st, 1954, that action was dismissed?

A. That is right.

Q. Now then that action was dismissed by the plaintiff before it was ever tried on its merits, wasn't it?

A. That is my understanding.

Q. What did you do, on behalf of Safeway, with reference to this problem of meeting trading stamp competition after the Association had dismissed its law suit?

A. Well I again took the matter up with you, to find out what our next steps would be.

Q. For the record, you took it up with me as Attorney for Safeway Stores?

[fol. 497] A. That is right.

Q. Now I hand you, Mr. Christensen, Exhibit 5-a to 5-u, which was admitted in evidence yesterday, as a survey made here in Oklahoma City of stamp store competitors, on September the 8th, 1954; did you cause that survey to be made?

A. Yes, sir.

Q. And was that made under the advice that we, as your Attorneys, gave you?

A. That is right.

Q. Well what was the purpose of it?

A. Well, to get current information on selling prices of trading stamp competitors,—selling prices on traffic items, I should say, of trading stamp competitors, and to also re-confirm that they were giving double stamps on Wednesdays, as well as single stamps on other days of the week.

Q. Was the result of that survey submitted to you, Mr. Christensen?

A. That is right.

Q. Referring now to Plaintiff's Exhibit "C", an ad dated Wednesday, September 15, 1954, in The Daily Oklahoman, did you cause that advertisement to be run in that paper?

A. Yes, sir.

Q. Mr. Christensen, were the prices quoted in the ad of September the 15th, 1954 on traffic items, based upon

[fol. 498] the survey that you have just testified to, made on September the 8th, 1954, of your computation, same being Exhibit 5-a to 5-u?

A. Yes, sir, it was.

Q. Now did you give instructions to anyone as to what should be done with reference to prices that were to be made on traffic items at that time?

A. Do you mean prior to the time this ad was run?

Q. Yes, sir?

A. Yes, I gave similar instructions in this instance as I did just prior to the time the ad of July the 21st was run.

Q. You gave them to whom?

A. To Mr. Templeman.

Q. And what were those instructions?

A. That he should reduce the price of the traffic items on which we had verified the prices of trading stamp merchants sufficiently,—reduce them sufficiently, to offset the true value of green trading stamps.

Q. And Wednesday was the date upon which your competitors were giving double stamps?

A. That is right.

Q. And by what amount were the prices reduced on Wednesday, September the 15th, to meet the trading stamp competition?

[fol. 499] A. Well approximately, as nearly as we could figure, 5.6% below the statutory minimum.

Q. And it was 5.6% below the prices at which Thrif-T-Wise and Speed were selling those items?

A. That is right.

Q. Now then Mr. Christensen, from the date of July 25th, 1954, when Safeway was restrained, during the month of August, and September, and October, 1954, I will ask you whether or not Miskovskys' and Scott's, and Speed, and the rest of the trading stamp merchants were selling traffic items at the minimum mark-off permitted by the Unfair Sales Act, and also giving double stamps on Wednesday, and single stamps on other days of the week?

A. They were.

Q. And Safeway had that competition from those trading stamp merchants during all the time it was under restraining order itself, is that right?

A. That is right.

Q. And the plaintiff charges that you advertised certain prices in Exhibit "B" here on d tes between September the 15th, 1954 and October the 22nd, 1954, here in Oklahoma City; I will ask you whether or not the trading stamp competitors of Safeway, on each of the dates mentioned in that Exhibit "B", were selling those traffic items at the minimum permitted by law, and giving double stamps on [fol. 500] Wednesday and single stamps on other days of the week?

A. Which is Exhibit "B"?

Q. Exhibit "B" attached to the plaintiff's Petition in this case, of which the plaintiff made charges that Safeway Stores, on September the 15th, 1954, September the 17th, 1954, September the 22nd, 1954, September the 24th, 1954, September the 29th, 1954, October the 1st, 1954, October 4th, 1954, October 6th, 1954, October 8th, 1954, October 13th, 1954, October 15th, 1954, October 20th, 1954, October 22nd, 1954, with having sold articles of merchandise in Oklahoma City at the prices listed in those exhibits; my question to you is, whether or not, on each of those days that fell on Wednesday, the Thrif-T-Wise group, and Speed, were selling those traffic items at the minimum price allowed by law, and giving double trading stamps with their sales?

A. They were.

By Mr. Miskovsky:

Now wait just a minute,—is that as to all of them, or just the Oklahoma City area?

By Mr. Crowe:

The Oklahoma City area.

A. Yes, they were.

Q. And on the other days of the week, other than Wednesdays, of the list I have read to you, were your competitors, [fol. 501] the trading stamp merchants, giving single stamps and selling these items at the minimum allowed by law?

A. They were.

Q. And I believe you say that that practice had continued for two or three years, at least, before that?

A. Dating back to the time these merchants put in trading stamps.

Q. Mr. Speed has testified in this case that he began giving single stamps, and double stamps on Wednesdays, in March of 1952, and continued it until March of 1955; now, I will ask you if those merchants, including Speed, Miskovskys, Scotts, and the other Thrif-T-Wise merchants were advertising in the newspapers of Oklahoma City that they were giving double stamps on Wednesday?

A. They were.

Q. And I will ask you if, at any time prior to March, 1955, these trading stamp merchants ever discontinued the use of double stamps on Wednesdays?

A. I don't think so.

Q. And during that time Safeway was selling the traffic items at the dollar value that the Thrif-T-Wise group, and Speed, was selling them, without giving stamps, is that right?

A. That is right.

[fol. 502] Q. I will ask you whether or not this Thrif-T-Wise group with these green trading stamps, advertised extensively in The Daily Oklahoman or the Oklahoma City papers?

. . . . . .

Q. Did they?

A. They advertised on Wednesdays, and on Fridays, regularly.

Q. And did they advertise the stamps themselves?

A. Almost in every instance, I would say.

Q. I hand you, Mr. Christensen, what has been marked Defendant's Exhibit No. 20, and ask you to state whether that contains an ad of the Thrif-T-Wise group?

A. It does.

Q. Was that in the Oklahoma City paper?

A. Yes, sir.

Q. Does the ad, itself, show where you could get these green stamps?

A. Yes, it does.

Q. And does it show that they were giving double stamps?

A. That is what it says here.

[fol. 503] Q. What is the date of it?

By Mr. Miskovsky:

Now just a minute,—I think the exhibit speaks for itself, if the Court please.

By the Court:

I think that is right.

By Mr. Crowe:

Well I would like to offer in evidence Defendant's Exhibit No. 20.

By the Court:

There seems to be no objection; it will be admitted.

Q. I believe there were nine merchants of the Thrif-T-Wise group on that day, advertised double stamps, is that right?

A. That is correct.

Q. I will ask you if whether or not those merchants listed in that ad are competitors, and were competitors with Safeway in the Oklahoma City area?

A. We consider them competitors, yes, sir.

Q. Do they run cash and carry markets here?

A. That is right.

Q. Now Mr. Christensen, I want to ask you whether, in your opinion, from your experience in the grocery business, that the acts of Louie Speed of advertising and selling [fol. 504] traffic items at the minimum price permitted by the Unfair Sales Act, and the giving of double stamps by him on Wednesdays with such traffic items, and the giving by him of single stamps on other days of the week, with such traffic items, from March, 1952, to March, 1954, during which period Safeway was selling these traffic items at the minimum dollar and cents price permitted under the Unfair Sales Act,—would that tend to divert trade away from Safeway to Speed, when he used the stamps and Safeway didn't?

A. I think we have factual proof that it does.

Q. Well is it your opinion that it diverts trade?

A. My opinion is that it does.

Q. In your opinion, would that conduct on the part of Speed, and Miskovsky, and Scott, and Carson, and the other Thrift-Wise merchants injure competitors, by giving those double stamps all during that period, with minimum priced articles?

A. It most certainly would, or they would meet the competition.

Q. I want to ask you whether or not, in your opinion, whether when the Retailers dismissed their suit on August the 31st, and those who sponsored it, namely, Miskovsky, Speed, and Carson, and the other Thrif-T-Wise merchants, —I will ask you if their conduct, from that time until October the 28th, when another restraining order was [fol. 505] issued, of giving double stamps on Wednesdays and single stamps on all other days, with minimum priced traffic items, injured Safeway as a competitor here in this Oklahoma City market?

A. Yes, we believe it did.

Q. And I will ask your opinion as to whether or not it tended to divert trade from Safeway to the Thrif-T-Wise group of green stamp merchants?

A. In my opinion, it did.

Q. Now Safeway had,—had Safeway been at this competitive disadvantage from the time they started double stamps, and single stamps, up until it lowered its prices on traffic items on July the 21st, 1954?

A. Yes.

Q. Would you state whether, in your opinion, Miskovsky, and his Thrif-T-Wise green trading stamp merchants, and Speed, had a competitive advantage during that period, of other merchants here?

A. They most certainly did.

Q. And I will ask you whether or not that kind of conduct for three years, on the part of Speed, would in your opinion tend to create a monolopy in that line of business?

A. I should think it would.

Q. And I will ask you whether you believe, or whether it is your opinion that when Speed advertised that he gave

double stamps on Wednesday, with the lowest, lowest price [fol. 506] at which he could sell traffic items, would divert trade from other merchants who did not give them, to his store?

A. It would, and it did.

Q. Well, did it do it?

A. It did.

Q. Now then, Mr. Christensen, at the time you reduced prices in the ad of September the 15th, 1954, with what intent were those prices reduced, on the traffic items listed in the ad,—what was the intent?

A. To, again, enable us to sell competitively to the merchants who were selling those traffic items at the same price and giving trading stamps.

Q. Did Safeway have any other intent, except to meet the trading stamp competition, by the reduction that day?

A. That was the primary intention; there was another one.

Q. What was the other one?

A. Actually, to get a decision as to determine whether or not trading stamps,—a decision from the court as to whether or not the giving of,—I mean the value of trading stamps reduced the retail price.

Q. Safeway decided to have it authoritatively determined as to whether it did or did not reduce the retail price?

A. That is right.

Q. That was an additional reason why the reduction [fol. 507] was made at that time?

A. That was an additional reason.

Q. Now I will ask you whether or not Safeway Stores had any legal advice as to the right to reduce those prices on September the 15th, 1954?

A. Yes, we did.

Q. What advice did you have?

A. We were advised that we were under no,—that we were no further under any kind of restraining order, and that we did, in their opinion, have the right to meet,—to reduce our prices to meet the trading stamp competition.

Q. Did you, as Division Manager or the Safeway Stores, rely upon the advice which your Attorneys gave you at that time?

A. Yes, sir.

Q. Did you have that advice before you made the reduction?

A. Yes, sir.

Q. You knew at that time there was no law suit even pending against you, and that the Retail Grocers had voluntarily dismissed their law suit before they got it tried?

A. Yes, sir.

Q. Now then I will ask you whether or not, Mr. Christensen, when that reduction of prices was made on September 15th, 1954, Safeway had any intent of diverting trade from [fol. 508] a competitor?

A. No, we never even mentioned it.

* * * * * * *

Cross examination.

By Mr. Miskovsky:

Question: Mr. Christensen, you say that you sought to get the County Attorney, in the beginning, after a survey was made,—

* * * * * * *

[fol. 509] Recess at 11:55 A.M., October 18, 1955,
to 1:30 P.M., October 18, 1955.

* * * * * * *

[fol. 510] Cross examination of witness, W. A. Christensen

By Mr. Miskovsky:

Question: Mr. Christensen, you stated that your Company sought to get the County Attorney to prosecute the Thrif-T-Wise merchants on the theory that the giving of stamps with minimum priced merchandise cut the price, and therefore violated the Unfair Sales Act, is that right?

* * * * * * *

Q. You sought to have the County Attorney prosecute the Thrif-T-Wise merchants?

* * * * * * *

[fol. 511] Answer: No, sir.

Q. What was your purpose in going to the County Attorney?

A. To get his opinion, and let him do whatever he deemed appropriate.

Q. Did you ask him to prosecute them?

A. No, sir.

Q. Was it your position then that the giving of stamps with minimum priced merchandise, by the Thrif-T-Wise stores created an illegal price?

A. Yes, sir, we believed it was.

Q. It was, and you believed that, and with that belief went to the County Attorney, did you not?

A. Yes, we did.

Q. Did you secure advice from Mr. Crowe before going to the County Attorney, after you conducted the first survey?

A. Yes, we talked with Mr. Crowe about it.

Q. Did he render advice to you on this question that you went to the County Attorney about?

A. Well, let me correct it; we did not go to the County Attorney; our attorney went to the County Attorney.

Q. Well, the officials of your Company also appeared before the County Attorney, did they not?

[fol. 512] A. At the County Attorney's request, after it had been submitted.

Q. Well I am not asking you about that; they appeared before the County Attorney, did they not?

A. They appeared before the County Attorney, at the County Attorney's request.

Q. Well just a minute,—after Mr. Crowe had initiated this, is that not true?

A. Yes, sir, that is correct.

Q. And Mr. Crowe initiated it at your instance and request, and with your approval, did he not?

A. Yes, sir.

Q. All right; now then, did Mr. Crowe give you any advice on this question that you went to the County Attorney about?

A. He advised with us, but I suggested that he do that.

Q. Just a minute,—I am asking you if he gave you any advice on the question that you went to the County Attorney about?

A. Oh, I wouldn't say that he gave me any specific advice; we just coloborated, and talked about it.

Q. You just coloborated and talked about it?

A. Yes, sir.

Q. Did he advise you what the remedies were under [fol. 513] the Unfair Sales Act?

A. No.

Q. Did he advise you that the Act provided that for its violation, one could be prosecuted for committing a criminal offense?

A. No, he didn't state that.

Q. You didn't know that?

A. No.

Q. You didn't know that at the time you sent, or approved of Mr. Crowe going to the County Attorney's office?

A. I would put it this way, Senator, that I probably knew that we could file an injunction suit against them, if we wished to.

Q. I am not asking you what you probably knew, I am asking you what you did know?

A. No, I did not know that.

Q. Your legal advisor was Mr. Crowe, was he not?

A. Yes, sir.

Q. You were not seeking legal advice from the County Attorney, were you?

A. We were asking the County Attorney for his opinion.

Q. For his opinion on what?

A. On the survey that we had made showing that the giving of trading stamps was a reduction in the retail price, when given with minimum priced articles.

[fol. 514] Q. And what did you have in mind when you went to the County Attorney?

A. To get his opinion and let him do what he thought was appropriate.

Q. What did you think was appropriate?

A. Well that was the question we were asking him.

Q. You didn't know, before you went there, that the law provided that the violation of it could be prosecuted as a public offense?

A. Well at least we didn't persue it from that manner.

Q. I am asking "you", not "we"?
A. No, I did not.
Q. Do you know that now?
A. Sure, I knew it now.
Q. When did you first find that out?
A. Well, I became cognizant of it after we were placed under a restraining order.
Q. In other words, you did not know that the violation of this law was a public offense until you were placed under restraining order?
A. We didn't violate the law.
Q. Well I am not talking about "we", I am talking about you, Mr. Christensen, as the directing head of the Safeway Company in Oklahoma and Arkansas.
[fol. 515] A. Well I didn't violate the law.
Q. Well I didn't ask you if you violated the law, I am asking you when you found out that the law provided that a violation thereof could be prosecuted as a public offense?
A. You are asking me now as to that?
Q. Yes.
A. Ask the question again, please.
Q. When did you first find out that the violation of the Oklahoma Unfair Sales Act could be prosecuted as a public offense?
A. After we were placed under an injunction.
Q. When, in July?
A. In July,—
Q. Was it July the 21st, 1954?
A. That is correct.
Q. You did not know it at the time you directed or authorized Mr. Crowe to go to the County Attorney's office?
A. No, I never gave that any consideration.
Q. You didn't expect Mr. Crowe to seek advice from the County Attorney in the civil aspects of the case, did you?
A. Well I expected Mr. Crowe to submit our proposition to the County Attorney and see what he would do about it, if anything.
Q. Now what was the date that you went to the County Attorney?
[fol. 516] A. I didn't go to the County Attorney; I couldn't give the exact date.

Q. Or that you authorized Mr. Crowe to go to the County Attorney?

A. We have a specific date in our record.

Q. Well give me your best judgment,—your best recollection, at this time?

A. Well my best recollection, at this time, was that it was in July, of 1954.

Q. I will ask you if it isn't a fact that it was several months preceeding July 21st, 1954, to refresh your memory?

A. When we first went to the County Attorney?

Q. Yes, sir.

A. Well, several months,—do you mean a month or two, or more than three? I would say some sixty days,—

Q. Well I will ask you,—

A. Well I will say it was maybe some sixty days before that.

Q. Sixty days,—then it was sixty days after you authorized Mr. Crowe, and other officials of your Company, to go to the County Attorney in conection with a survey of the Thrif-T-Wise sales, before you found out that the law provided that a violation of it was a public offense, is that right?

[fol. 517] A. Well I knew that you weren't supposed to violate the law, and we hadn't violated the law, at that point.

Q. Well I didn't ask you that question, Mr. Christensen; I asked you if it was some sixty days after going to the County Attorney that you found out, personally, that the violation of the law could be punished,—prosecuted as a public offense?

A. Well I knew that you could be prosecuted for violating the law.

Q. Well when did you know that now; I thought I understood you to say the first time you found out about that was when you were first restrained, in July of 1954?

A. I said that I knew we could be prosecuted for violating the law, but I told you, earlier, that I didn't know that we could, or would, prosecute someone else, by that same method.

Q. When did you find out that "you" could prosecute someone under the law, the same as anyone else?

A. Well, from the standpoint of our own Company's policy, I found out that we could not prosecute anybody else, any merchant, under the law, until after we had first been placed under restraining order ourselves.

Q. Mr. Christensen, I will ask you if it isn't a fact, if it wasn't reported to you, that Officials of your Company, together with Mr. Crowe, sought to get Mr. Martin to prosecute the Thirf-T-Wise merchants, and that he refused [fol. 518] to prosecute to prosecute them at your instance and request, and stated that you could resort to the civil remedies under the law?

A. That is not correct.

Q. That is not correct?

A. No, sir.

Q. What is correct in that regard?

A. I told you once, and I will repeat it; I asked Mr. Crowe to submit this evidence to the County Attorney and ask him to do whatever he felt was appropriate,—to get his opinion, and to do whatever he felt was appropriate. We never did suggest, not one time, that he prosecute anybody; in fact, I think we specifically advised him not to prosecute, as a criminal offense.

Q. As Directional Head of the Safeway chain in Oklahoma and Arkansas, had you read the Unfair Sales Act, prior to the time you authorized Mr. Crowe to go to the County Attorney's office?

A. I had never read it; I have never read it to date.

Q. You have never read it?

A. No.

Q. As Directional Head of the Safeway?

A. I have never read it.

Q. Then from your own personal knowledge, you have no knowledge of what it provides?

A. Oh, yes I do.

[fol. 519] Q. You do now?

A. Yes, because I have discussed it,—probably many phases of the Oklahoma Unfair Sales Act, with our attorneys.

Q. All right, now then, did he ever render you any written opinion, or write you any letter or memorandum

on what this law provided in respect to what you were trying to do?

A. No, I had no letter from him to that effect.

Q. You did not?

A. No, sir.

Q. Did Mr. Crowe advise you that under the law, for violation of it, that is, for advertising, offering for sale or selling merchandise at less than cost to the retailer as defined therin, that one could be prosecuted?

A. I don't know that he ever told me that.

Q. You don't know whether he ever did?

A. No, sir, I don't.

Q. Did Mr. Crowe ever advise you whether or not stamps cut prices?

A. Yes, he did.

Q. What did he tell you,—did he do that in writing, or orally?

A. Yes, he advised me in writing, that in his opinion the giving of trading stamps with minimum priced articles resulted in a reduction in the retail price, and therefore [fol. 520] violated the law.

Q. When did he so advise you in writing?

A. Well, when I first wrote to him in,—I think it was January, 1954.

Q. Then he responded to your letter,—

A. No, that was in 1953.

Q. And he responded to your letter?

A. Yes, sir.

Q. Could you get us that letter, please sir, which sets forth his advice to you?

A. Yes, sir. (Mr. Crowe hands witness instrument). Yes, sir, here is the letter where he advised me along the lines that I just told you.

Q. May I see that, please?

A. Yes, sir.

* * * * * * * *

[fol. 521] Q. You then did know, prior to cutting the prices on July the 21st, 1954, what the remedies were under the law, is that correct,—in other words, you knew that one could be prosecuted for violating the law, or that in-

junctive relief by civil suit in the District Court could be had for violation of the law, did you not?

A. I knew that one could be prosecuted for violating the law, but I didn't inquire as to the actual proceedure.

Q. You also knew that you had three things you could resort to; one, was prosecution, if you could get the County Attorney to do it; two, if he refused to it you could resort to a civil action to stop it, did you not, and you have resorted to civil action against the Thrif-T-Wise merchants in this cause, have you not,—only after you were sued?

A. That is right.

Q. And the third thing you had to do was to go outside the law and fight it out at the marketplace, and that is, reduce prices, that is correct, isn't it?

A. Well I wouldn't say it was correct, to go outside the law, particularly in view of the fact that we had the [fol. 522] information from our attorney,—he said, in his opinion, it was a legal arrangment.

Q. I am not saying it wasn't, but you did first go to the County Attorney, and he didn't prosecute?

A. We went to the County Attorney, and he did not prosecute.

Q. And you did not file a civil action to attempt to anjoine the Thrif-T-Wise merchants, did you?

A. No, se didn't.

Q. You did reduce your price to your idea of the value of the stamps, did you not?

A. Yes, sir.

Q. On only a few traffic items,—a few selected traffic items?

A. On selected traffic items.

Q. Not all the way across the board?

A. Traffic items on which we had made a survey, and we knew, from actual purchases, that they were selling at specified prices and giving stamps.

Q. What did Mr. Crowe tell you your rights were about meeting a known illegal price of a compeitor?— If anything?

* * * * * * *

[fol. 523] A. Repeat the question, will you?

Q. What did Mr. Crowe tell you about your rights to meet the known illegal price of a competitor.

A. Mr. Crowe told us that in his opinion, we could meet a competitor's price.

Q. Regardless of whether it was legal or illegal, is that right?

A. Well how would we know whether it was legal or illegal?

Q. Well I didn't ask you how you would know; I asked you if he advised you that you could meet a price whether it was legal or illegal,—did he do that?

A. He advised us that we could meet a price, and he didn't say whether it was legal or illegal,—he said we could meet a price.

Q. All right; now what was your policy,—was it your policy to meet any price of a competitor, regardless of whether it was legal or illegal?

A. It was our policy to meet the price.

Q. Regardless, is that right?

A. Regardless, yes, sir.

Q. Rather than to resort to the courts for civil relief, [fol. 524] where the County Attorney refused to prosecute?

A. Well, that wasn't a part of our policy, but we met the price, after having advice from Mr. Crowe.

Q. It was your idea then, and you were operating on the theory, that the giving of stamps with minimum priced merchandise reduced the price and rendered the price of a competitor on minimum priced items with which stamps were given at a price less than cost under the Act, is that not correct?

A. That is right.

Q. And you met that price with the belief and with the thought, and with the understanding that it was an illegal price, did you not?

A. No,—no.

Q. You believed that the Thrif-T-Wise price on minimum priced merchandise, when sold at the minimum, and when stamps were given with it, either single or double, that that put it below the legal price,—that was your idea of it, wasn't it?

A. We sought to find out whether or not it was an

illegal price, but we didn't find out, so we presumed that it was a legal price, and met the trading stamp competition with prices sufficiently low to off-set the value of trading stamps.

Q. Now is it your position in this suit that the trading [fol. 525] stamps renders a price below the minimum when given with minimum priced merchandise, or not?

A. It is our belief that it is.

Q. And that was your belief at the time you met those prices on July the 21st, wasn't it?

A. That was our belief then, yes.

Q. Yes, sir,—you were present all during the hearing on the application for a temporary injunction, before Judge VanMeter? Were you not?

A. Right.

Q. And after the temporary restraining order had been issued, restraining and enjoining your Company from advertising, offering for sale or selling any merchandise at less than cost as defined in the Oklahoma Unfair Sales Act,—

A. I was at that hearing, yes.

Q. —did you understand Judge VanMeter to state, after a full and complete hearing of about two and one-half days,—two days of testimony and a half day of legal arguments, that you did not have a legal right to reduce your prices under the excuse or guise of meeting trading stamp competition?

A. No, I didn't understand him to say that.

Q. What did you understand him to say?

A. I understood him to say that he would continue [fol. 526] the restraining order in effect if the plaintiff, in that instance, would put up a bond, and gave you certain time to put up a bond, and when you didn't put the bond up the case was dismissed, and therefore we were not under restraint after the time the case was dismissed; that was my understanding.

Q. That was your understanding?

A. Yes, sir.

Q. Was anything said about meeting the price of stamp competitors and reducing your price below that minimum?

A. At what time?

Q. At the time Judge Van Meter had this hearing,—rendered the decision, or ordered the temporary injunction?

A. I think there might have been some discussion on that pahase of the issue, and Judge VanMeter, in my opinion,—I mean as I recall it,—judge VanMeter stated that that wasn't the issue. If it had been the issue, he would have had a pretty definite opinion about it.

Q. He said that he would decide whether or not stamps reduced the price when that was tried on its merits, didn't he?

A. That is the impression that I got,—that that was when it would be decided.

Q. And he said that in his opinion that if the stamps reduced the price, that under the law you didn't have a right to meet an illegal price, didn't he?

[fol. 527] A. I don't know that he said that.

Q. I will ask you if that wasn't your understanding,—he said, "I am not deciding that issue, but, if I decide that stamps reduce the price, then the price of the Thrif-T-Wise merchants would be an illegal price and under the law you would have no right to meet an illegal price",—didn't he?

A. No, I didn't understand it like that at all.

Q. You didn't understand it like that?

A. No, he said he wasn't trying the case from the standpoint of stamps. This hearing was based upon whether or not we were just in outright violation of the law,—the trading stamp issue wasn't a point of issue at that time.

Q. Now you were restrained and enjoined from selling merchandise at the minimum, less the value of stamps, is that not right?

• • • • • • •

[fol. 528] Q. Let me put it this way, Mr. Christensen; prior to the issuance of the temporary restraining order, you advertised, offered for sale and sold minimum priced certain selected items,—certain selected articles of merchandise at the minimum, less your determined value of the stamps, is that correct?

A. That is correct.

Q. When the temporary restraining order was issued you stopped, did you not?

A. Yes, sir.

Q. And after the hearing on the temporary injunction, [fol. 529] when the Court continued the restraining order in force and effect and ordered the entry of an injunction upon the posting of a bond, you did not deviate from your observance of that Order, did you?

A. We did not.

Q. It was only after the dismissal of that Order that you commenced doing the thing that you had been restrained of before, is that correct?

A. That is correct.

Q. You understood that had the merchants put up the bond, a $7,000.00 bond, and the temporary injunction entered, that you couldn't then do what you had been restrained from doing, is that correct?

A. That is correct.

Q. And it was only because the merchants dismissed and there was no Order against you, that you started doing it again, is that correct?

A. Well now that is only one of the reasons.

Q. Well that is the main reason, isn't it?

A. Well, that is only one of them.

Q. Well what is the other one?

A. The other reason is, that we wanted a determination from the Court as to whether or not the giving of trading stamps with minimum priced articles resulted in a reduction of the retail price and thereby violated the law.

[fol. 530] Q. And you wanted the County Attorney to make that determination and he didn't make the determination, so you wanted the determination made here, is that not correct?— And when the merchants dismissed their suit, then you were bound and determined to get a determination of the law on that point, is that not right?

A. That is the second point, yes, sir.

Q. Why didn't you file an injunction suit against the stamp people,—not cut the prices themselves,—you could have gotten a determination of it that way, couldn't you?

• • • • • • •

A. Basically, it is against our general policy to sue any merchant, and if you will recall, we had never sued a merchant for any violation of law, despite the fact that many violations had been in effect, we had never sued a merchant.

Q. You always got someone else to do that for you, didn't you?

[fol. 531] A. No, sir, I don't know that anybody was ever sued.

Q. You always called Larry Bowman about it when someone was out of line, didn't you?

A. Larry Bowman didn't sue anyone either.

Q. Did you ever call Larry Bowman about merchants being out of line?

A. I never did, personally, no, sir.

Q. Did your Officials, with your approval, do so?

A. I think some of our managers have discussed it with Larry Bowman, yes, sir.

Q. Yes, sir,—yes, sir,—you changed your policy, or went contrary to your policy when you filed against thirteen merchants here in Oklahoma City, is that right?

A. No, our basic policy hasn't changed; we just had no other alternative.

Q. And you filed suits in Tulsa?

A. That is right.

Q. Against merchants there, did you not?

A. That is right.

Q. On the same theory involved here?

A. No,—not on the same theory.

Q. Now then you say Oxford made a survey of the Norman area?

A. That is correct.

Q. Is Oxford a subsidiary of the Safeway chain,—corporation?

[fol. 532] A. No, sir.

Q. It is not?

A. No.

Q. Do they do work for you?

A. Yes, sir.

Q. Norman was the first place that you made the survey in, is that correct,—or caused a survey to be made?

A. That is right.

Q. And Oklahoma City was the second place that you caused a survey to be made?

A. Yes, sir.

Q. Did you authorize the officials of your company, and your attorney, to consult with the County Attorney of Cleveland County after that survey was made, also, did you not?

A. Yes, sir.

Q. And the County Attorney of Cleveland County did not institute a prosecution against the merchants there, did he?

A. No.

Q. You did not reduce your prices to meet the alleged cost of trading stamps in Norman, did you?

A. No, we didn't at that time.

Q. You said that in April, 1954, a number of prices were reduced to meet the promotional value of stamps, is that correct?

[fol. 533] A. Repeat that, please.

Q. That in April, 1954, a number of prices were reduced to meet the alleged value of stamps?

A. April, 1954,—

Q. You said a hundred or so items were reduced, not below the minimum, but reduced down; did I understand you correctly?

A. April, 1954—

Q. Non-traffic items?

A. Oh, yes,—yes.

Q. You did that to try to meet the promotional value of stamps, did you not?

A. That is right.

Q. You knew that if you wanted to give stamps to meet stamps with stamp competition that you could do that, didn't you?

By Mr. Crowe:

We object to that for the reason that it is incompetent, irrelevant and immaterial, and a business would not be required to adopt something in which it did not believe.

By the Court:

Overruled.

A. We presumed that we could.

Q. Yes, sir,—did you reduce the price of the many items [fol. 534] that you testified about, in 1954, in April 1954, only in Oklahoma City, or did you do it in every town in Oklahoma where you operate and have had trading stamp competition, or competition of independent merchants who were giving trading stamps, cash register receipts, or similar evidences of value?

By Mr. Crowe:

I object to that question because it is double barreled; one question is, did they reduce the prices in Oklahoma City, and the other one, did they reduce them everywhere else.

By the Court:

Yes, it is kind of a double-barrled question.

By Mr. Miskovsky:

Well we will single-barrel it, if the Court please.

Q. Did you reduce your prices to meet trading stamp competition,—you reduced your prices to meet the promotional value of trading stamps on non-traffic items, and not below the minimum provided by law, in Oklahoma City, did you?

A. That is right.

Q. Did you do that in any other town in Oklahoma where you operated and where you also had stamp competition?

A. Yes, sir.

[fol. 535] Q. What other town did you do it in?

A. Norman.

Q. And what other town?

A. I think that is all, at that time.

Q. Only in Oklahoma City and Norman?

A. That is right.

Q. Did you do it in Muskogee?

A. No.

Q. Did you do it in Tulsa?

A. No.

Q. Is it true that you enjoy a virtual monolopy in the grocery business in Muskogee, Oklahoma?

A. Oh no, that isn't true.

Q. It isn't,—is it true that you do in excess of fifty per cent of the volume in Muskogee, Oklahoma?

A. That isn't true either.

Q. What per cent of the total grocery volume do you do in Muskogee?

• • • • • • •

[fol. 536] Q. Go ahead, give us the percentage in Muskogee?

A. Based upon the total food sales, listed in Sales Magazine, we estimate currently that we are doing in the neighborhood of thirty percent of the total food business in the town of Muskogee.

Q. How about 1954, what was your total per cent then?

A. About the same then.

[fol. 537] Q. About the same?

A. Yes, sir.

Q. What is your total per cent in Tulsa?

• • • • • • •

A. It is probably between twenty-six,—it varies, as you can understand, from week to week,—around twenty-five to thirty per cent.

• • • • • • •

Q. Do you have the list that the Court asked you to give us, giving us the specific percentage of volume that you are doing in the towns that we discussed?

A. Percentages of volume,—no.

Q. Percentages of volume in the different towns?

[fol. 538] A. No.

• • • • • • •

[fol. 540] Q. Mr. Christensen, what did I understand you to say your total sales volume of the food business to be in Tulsa in 1954?

A. In 1954?

Q. Yes, sir.

A. Well, about the same as it is right now; I told you.

Q. Well what is it now?

A. Well I just got through telling you between twenty-five and thirty per cent.

Q. Well, what is it?

A. It ranges between twenty-five and thirty per cent.

Q. At Tulsa and Muskogee you have between twenty-five and thirty per cent; what are your quotas, or objectives in [fol. 541] in the Tulsa area at the present time?

* * * * * * *

Q. Go ahead and answer the question?

A. Well—

Q. Have you changed your quota?

* * * * * * *

Q. The percentage,—what percentage of the market?

* * * * * * *

[fol. 542] A. It is right close to one hundred per cent of quota; some weeks it is even a hundred per cent of quota.

Q. Well now you say your quota is about thirty per cent,—are you sure about that?

A. No, I didn't say it was thirty per cent.

Q. Well what is your quota?

A. Our quotas vary by cities, depending upon the cities.

Q. Well what is your quota in Tulsa, Oklahoma?

* * * * * * *

[fol. 543] A. Well our quota, our percentage of quota, and the volume of business that we are doing now, are just about the same.

Q. In other words you have achieved your quota?

A. In Tulsa and Muskogee.

Q. In Tulsa, and you have achieved your quota in Muskogee?

A. That is right.

Q. What was your volume, percentage-wise, in Norman, Oklahoma in 1954?

* * * * * * *

[fol. 544] A. I don't recall.

Q. Could you get that for us?

A. I could get it, yes.

Q. What was your percentage, or your quota, in Norman, percentage-wise?

A. I don't know,—I can't remember; I could get it.

Q. Well will you get that for us, and what it is now?

A. I can get that also.

Q. What was your percentage of the total volume in the Oklahoma City area?

A. Oh, around seventeen and one-half per cent; I think that would be as good an estimate as I could make of it.

Q. What is it now?

. . . . . .

[fol. 545] Q. All right, what was your percentage-wise quota in Oklahoma City in October, 1954?

A. We hadn't set a quota at that time.

Q. What is the quota now?

By Mr. Crowe:

Now I object to that.

By the Court:

Overruled; the quotas came in here someplace; I thought they started in either October or November.

By Mr. Crowe:

Of '54, but the transcript of the hearing shows that you ruled that it only went to the end of '54, because this litigation was filed in October, '54.

By the Court:

Well now gentlemen, we are getting off of the track again,—taking up a lot of time.

By Mr. Miskovsky:

Yes, sir, that is right.

By the Court:

I looked over that Form 26's, and it seemes to me that they ran back until September or October, 1954, showing [fol. 546] quotas; maybe I was mistaken, but it seems to me that they started about that time.

By Mr. Crowe:

That is right, they started.

By the Court:

So I cut him back to October, '54; now he says he didn't have any in October, '54;—I don't know.

By Mr. Crowe:

No, the last question I objected to, your Honor is, what is it now; and that is in '55.

By the Court:

Well, I figured that he had it in October, '54, if I remember those forms.

By Mr. Crowe:

They did,—he had it, but he said he didn't know what it was.

By the Court:

No, he said he didn't have one.

A. I don't think we had a quota,—we didn't have a quota when this law suit was filed. I think our quota came in long after that.

. . . . . .

[fol. 547] By Mr. Crowe:

Well Mr. Christensen, don't you have, in your pocket, papers that show you when the quota did take effect in Oklahoma City and Tulsa,—if you haven't, then—

A. Well I don't believe I do.

By Mr. Miskovsky:

Well he said he had a quota in Tulsa in '54, and Muskogee, and in Norman,—

By the Witness:

No, I didn't say that.

By Mr. Crowe:

I think the date is shown there on that when we first began.

A. The quotas were established on the 10th and 9th, of '54.

Q. All right, give us what your quota was, what quota, percentage-wise, was established for Oklahoma City on that date?

A. As I told you before, it was around seventeen and one-half per cent.

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[fol. 550] Q. Now Mr. Christensen, you were present in the court room when Mr. Templeman testified in the first case, before Judge VanMeter, were you not?

A. Yes, sir.

Q. I will ask you if you were present when this question was asked, and answer given,—at page 192 of the transcript of that hearing; Question, by me: "And shortly thereafter you concluded that the Safeway Store should have about twenty per cent of the sales volume in Oklahoma City?" Answer: "We figured that was a fair estimate, based on our facilities". Were you present when that question was asked and answer given?

A. Yes, sir.

Q. Was that correct then?

A. That is substantially correct.

Q. Yes, sir.

A. And so is the answer that I just gave you a few minutes ago. What was the date of that?

Q. What was the date,—the date of that was August the 24th, 1954, is that correct?

[fol. 551] A. The date that that statement was made?

Q. Yes, sir.

A. I expect that is true, yes, sir.

Q. And you have not achieved that twenty per cent?

A. No.

Q. And had not achieved that twenty per cent at the time you reduced your prices under the statement of meeting trading stamp competition on July the 21st?

A. We had not achieved it, and we didn't anticipate achieving it until—

Q. Well I asked you if you had achieved it?

A. No.

Q. When was the decision about the twenty per cent made?

A. The reason I can't answer your question specifically.

Q. Well about when? Was it made prior to the 21st?

A. Our quota of twenty per cent was based upon the facilities as of a certain date, or when certain facilities are completed.

Q. Yes, sir,—

A. And it isn't twenty per cent now, and probably won't be until next year, when our facilities are completed.

Q. Well he testified on August the 23rd, or 24th, that it was twenty per cent at that time?

A. He didn't state the exact time.

[fol. 553] Q. You understood the question, and the answer, that I read a little while ago,—"We figured that was a fair estimate—

. . . . . .

Q. —"We figured that was a fair estimate, based on our facilities"?

A. He didn't say "present facilities" or "future facilities" though.

Q. It says, the answer was,—"We figured that was a fair estimate, based on our facilities"; Question: "And how much per cent did they actually enjoy at that time", [fol. 554] was the next question; it related to that time. Now was that your idea about it at that time, when he spoke of "we"?

A. I would say between seventeen and one-half, and—about seventeen and one-half should be our quota at that time.

Q. Between seventeen and one-half and what,—twenty?

A. No, I didn't say twenty.

Q. Well, you said between seventeen and one half, and, and I interrupted you.

A. Well that is all I said, I didn't say any other.

Q. Between seventeen and one-half, and what?

A. Well, I could have said it better if I had said approximately seventeen and one-half.

Q. Well seventeen and one-half per cent, according to the affidavit that was filed in the Federal Court by an official of your company, was the volume that you had enjoyed for a number of years, up to and including the 21st day of July, 1954, is that correct?

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A. No, I don't think so.

• • • • • • •

[fol. 555] Q. I will direct your attention to an exhibit here, which is noted, but not marked yet,—Affidavit in Opposition to Motion to Remand, the third paragraph therein, "that Safeway operates eighty-five retail grocery stores, in twenty-six cities and towns within the State of Oklahoma; that it is now, and has been, for several years past, selling approximately seventeen and one-half per cent of the total food products sold at retail within the State of Oklahoma; that the members of plaintiff Association sell over thirty per cent of all said products".

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Q. Mr. Christensen, I will again direct your attention to Plaintiff's Exhibit "H", paragraph 3 thereof, and ask you to state if that is a correct statement of facts?

[fol. 556] A. That is a correct statement of facts, depending upon what you would call "several",—other than the interpretation of "several".

Q. Well what do you mean about it?

A. Well several years could go back five years; my interpretation—

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Q. What do you mean by "several"?

A. I would say back five years.

Q. Then according to that, you had enjoyed, for five years, seventeen and one-half per cent of the market?

A. No, I didn't say that. I stated my interpretation on "several", as written in this third paragraph, the word "several".

Q. All right, then having seen that, tell us for how long a time you had enjoyed that much of the market?

A. I would say back as far as two years, maybe as much [fol. 557] as three, but not beyond that.

Q. Two, or not to exceed three years?

A. I would say something like that.

Q. Then your volume had been more or less static for a period of three years preceding July 21st, 1954?

A. No, our volume wasn't static,—that is only the percentage of business; we are doing business in the State as a whole, and going up all the time; people are moving in here, and more mouths are to be fed, and so forth.

Q. Yes, sir. You say the reduction that you made on a number of non-traffic items in April of 1954 had no appreciable effect on your volume, is that correct?

A. That is correct.

Q. You did not gain any volume by that manoeuver?

A. Well, we couldn't contribute that to gaining any volume.

Q. Well anyway, you tried that, and you didn't gain any volume, did you?

A. That is right, we tried it, and didn't gain any volume.

Q. All right; after the survey was made in Norman, you say prices were not reduced there under the excuse of meeting trading stamp competition?

A. No, sir, I didn't say that.

Q. After the survey was made in Norman, were your [fol. 558] prices reduced on a selected number of traffic items to meet the alleged cost of trading stamps there?

A. They were not.

Q. Did you ever reduce prices in Norman, under the guise of meeting trading stamp competition in Norman?

A. No, I wouldn't say that was correct.

Q. Did you ever do that there?

A. We never did reduce the price in Norman on the traffic items to off-set the value of trading stamps.

Q. You started that in Oklahoma City?

A. That is where we did that.

Q. You are going to let us know what your percentage of the food business was in Norman before the trial is over?

A. Yes, sir.

Q. Yes, sir,—and Enid also?

A. If you ask for it.

Q. Yes, sir, will you let us have that?

A. Yes, sir, I can furnish it.

Q. It was, at that time, your belief that the sale of minimum priced merchandise, along with stamps, violated the Unfair Sales Act, is that correct?

A. We believed that, yes, sir.

Q. Yes, sir,—and I say that is your position now?

A. Well our position now, we are trying to get the Court to tell us whether it is or not.

[fol. 559] Q. I know, but your position is that you are telling the Court that it is your position that the giving of stamps with minimum priced merchandise, that violates the law; that is your position, isn't it? That is what you assert here?

A. And that is what we believe, yes, sir.

Q. Yes, sir,—and you reduced your prices on a selected number of minimum priced items by the alleged value of stamps, with that belief in mind, didn't you?

A. Well repeat that again, will you please?

Q. You believed then, and you believe now, that the giving of stamps with minimum priced merchandise reduced the price and rendered the price illegal, didn't you?

A. We believed that it made us competitive; now whether it was legal or illegal, that is something for the Court to decide.

Q. Well now wait a minute; lets just stop and start talking about what I am talking about for a while, will you?

A. All right.

Q. Did you or did you not believe, that the selling of minimum priced items, and giving trading stamps with it, reduced the price below the statutory minimum under the Unfair Sales Act?

A. Yes, sir, we believed that.

Q. You believed that then, and you believe that now?

A. We believe that now.

[fol. 560] Q. And with that belief in mind, you met that price in Oklahoma City, didn't you?

A. Yes, sir.

Q. All right; you only reduced your prices on a selected number of minimum priced items, by the alleged value of trading stamps; is that correct?

. . . . . .

Q. On the dates, and places, and the items complained of in this suit, and in the suit on July 21st?

A. We reduced the prices on all those items listed in the ads on July the 21st, and September the 15th.

Q. And nothing more?

A. Nothing more, at that time.

Q. Yes, sir, you did not reduce the prices on all your merchandise by the probable, or alleged value of stamps?

A. No, it wasn't necessary.

Q. You advertised that your reduction was to meet trading stamp competition, did you not?

A. Yes, sir.

Q. There was other merchandise, several hundred items, in the competitive stores, handled by trading stamp merchants that were priced the same as yours, weren't there?

A. There were several hundred in addition to the traffic items?

[fol. 561] Q. Yes, sir?

A. Well, no; there were several hundred that were priced higher than ours.

Q. Let me ask you this; were there a number of other items that were competitive with your,—in the I.G.A. price book, lets take it for example,—that you didn't reduce the price on?

A. Yes, I am sure there were.

Q. Then you only reduced the prices on the selected number that were even with yours, and not on all of the items that were even with yours, isn't that correct?

A. We selected traffic items.

Q. Now wait a minute, lets get it straight; they had a number of items, including traffic items and other items, that you were the same on, is that not right?

A. That is right.

Q. You only reduced the price on a few selected traffic items, didn't you?

A. We reduced the prices on the items that we had made purchases of and gotten stamps to verify it.

Q. Yes, but you had available their price structure on other items than you got prices on, didn't you?

A. Well we had made price checks.

Q. And you didn't reduce your price to the alleged value of stamps on all the purchases that you made, either, did [fol. 562] you?

* * * * * * *

Q. Well, did you, or not?

A. I believe we did.

Q. Did you reduce the price of your merchandise by the alleged value of stamps on all purchases of all items that you made?

A. At one time or another we did, I am sure.

Q. Did you do it all at one time, or just on certain occasions?

A. Well, not all at one time, but we ran several ads.

Q. Then you only purchased traffic items?

A. That is all we purchased, yes.

Q. As a basis for this ad?

A. As a basis for this ad, or whatever litigation might come up later.

Q. But didn't reduce it on other items that you had an opportunity to know, and did know, were the same as yours, is that correct? Price-wise?

A. That is correct.

Q. The trading stamp merchant gave a stamp with all merchandise sold in his store, didn't he?

A. I presume so.

[fol. 563] Q. Minimum priced, or otherwise?

A. That is right.

Q. Yes, sir,—you say the purpose of your reduction was to be competitive with the Thrif-T-Wise merchants, is that right?

A. That is right,—I said that was one of the reasons.

Q. And was it to meet trading stamp competition?

A. That is right.

Q. Did you intend for the public to believe that you were reducing the price on all items which you and the Thrif-T-Wise merchants were the same on?

A. No, our ad doesn't say that; our ad says,—spells out exactly what we were doing.

Q. I see; now you say the reduction of prices to meet the prices of a competitor would not divert trade, is that correct?

A. I don't think it would.

Q. Would the reduction of prices below the statutory minimum, and below that of any competitor in the community, tend to divert trade?

A. I think it would.

Q. And create a monopoly? If continued, unrestrained?

A. If continued, unrestrained, yes, sir.

Q. Would such lessen competition?

A. Yes, sir.

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[fol. 564] Q. Would the cutting of prices below the statu-
[fol. 565] tory minimum of a competitor in a community, unrestrained, tend to create a price war?

A. It is very likely that it would.

Q. It would trigger a price war, wouldn't it?

A. It would if I was your competitor.

Q. Yes, sir,—and you are my competitor, aren't you?

A. Yes, sir.

Q. Yes, sir,—now you say you arrived at the true value of green stamps?

A. Yes, sir.

Q. And you did reduce the traffic items in question, in every instance, by your idea of the value of S & H Stamps, is that correct?

A. Please repeat that.

Q. You did reduce the traffic items in question, in every instance, by your idea of the value of S & H Stamps, did you not?

A. That is correct.

Q. You made no effort to arrive at the value of cash register receipts or other stamps of other competitors, is that correct?

A. We did some research on the cost to the merchant of the stamps, but primarily, we were concerned with the S & H stamps, because they were the people that at the time this issue became apparent, were doing all the advertising.

[fol. 566] Q. After the case that was filed and tried by Judge VanMeter on application for a temporary injunction

was dismissed, you say another survey was made in the Oklahoma City-Midwest City area, is that correct?

A. You mean a price check? Do you mean a price check now, of purchased articles, or a survey?

Q. Yes, sir?

A. Well, we purchased articles again.

Q. And that was the basis for, again as a basis for the ad that you ran in Oklahoma City on September 15, 1954?

A. That is right.

Q. And again you only purchased traffic items?

A. Again, we only purchased traffic items.

Q. And only a selected number of traffic items that you desired to purchase?

A. Oh, who else could decide for us besides us?

Q. Well just you, on the ones that you wanted to use; how many traffic items would you say that there are, generally, in the grocery field?

A. Oh, I think the customer is quite familiar—

Q. Well I am not talking about the customer; I am talking about, Mr. Christensen, as an expert, that has been in the business?

A. Well the customer is the one that determines traffic items, though.

[fol. 567] Q. Well all right, how many, roughly speaking, in this community, traffic items are there, and how many items, different items, are recognized as traffic items in the Oklahoma City-Midwest City area?

A. Well I would say there are about seventy-five, commodity.

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Q. How many would you say?

A. There were quite a few; I would have to check them.

Q. Did you select the ones that you thought would sell the most?

A. We selected the ones, most certainly, that we thought the customer was familiar with the price of.

Q. Yes,—the ones that you thought had the greatest drawing power, is that right?

A. That is right.

Q. After that survey was made you again reduced the

prices on selected items to meet the value of S & H green trading stamps, didn't you?

A. Yes, sir.

[fol. 568] Q. This was done, this next time, here in the Oklahoma City-Midwest City area, is that correct?

A. No, I think at the same time we ran an ad in some other towns,—I think we ran an ad in Tulsa.

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Q. Did you, under your theory, meet,—reduce your prices to meet trading stamp competition on September the 15th in any other place than Oklahoma City-Midwest City, on that date?

A. On that date,—I don't believe we did.

Q. Did you reduce the prices, under your theory of meeting trading stamp competition anywhere in Oklahoma, —anywhere other than in Oklahoma City or Midwest City before you were again enjoined by the District Court on [fol. 569] October the 25th, 1954?

A. I think we did.

Q. Where?

A. I think we ran an ad in Tulsa,—several ads in Tulsa.

Q. To meet trading stamp competition?

A. I believe we did,—now I didn't check that to be sure.

Q. Any other place?

A. No, not that I know of.

Q. Not in any other place?

A. There might have been one, but I don't recall.

Q. Then it was confined principally to the Oklahoma City-Midwest City area, and to Tulsa, from September the 15th, 1954 until October 25th, 1954, when Judge Glen O. Morris again, upon the verified petition of the plaintiff herein, restrained you, is that correct?

A. We continued, yes, sir.

Q. And after that restraining order was issued, you again stopped that practice, didn't you?

A. We sure did.

Q. The other items complained of in Exhibit "B" were arrived at in a different manner, other than Tulsa, is that right?

A. Well let me see Exhibit "B".

Q. Yes, sir.

[fol. 570] Q. Now I will direct your attention to Exhibit "B" which sets forth items, places and dates complained of herein,—

A. Well don't talk so loud, please.

Q. Well pardon me, Mr. Christensen,—October the 15th, I believe, in Oklahoma City?

A. Yes.

Q. Now that was under the theory of meeting trading stamp competition, is that correct?

A. Yes,—now state your question again; I recognize the exhibit now.

[fol. 571] Q. You reduced the prices, and these prices were below the statutory minimum, and you did that on the theory of meeting trading stamp competition, is that right?

A. Well let me look at this here.

Q. Well I beg your pardon, this is September the 15th 1954,—correction.

A. Now ask me your question again.

Q. Now these prices, that you advertised, offered for sale and sold, under the date of September the 15th, here in Oklahoma City, were advertised, offered for sale and sold, to meet trading stamp,—under your theory of meeting trading stamp competition, is that right?

A. Yes, sir.

Q. Now on September the 11th, at Oklahoma City, you advertised three items; is that the same theory there?

A. Yes, sir.

Q. Then at Enid, on September 17th there are five items at less than cost as defined in the Act; what was the basis for your reduction there?— Your basis for the reduction there in Enid?

A. The basis for the reduction in Enid was based upon price cuts that had been made by competitors prior to the time we met these prices.

Q. And it was your theory, as you explained before, that you had a right to meet a price of a competitor regardless [fol. 572] of whether it was below the statutory minimum or not, is that right?

A. I think we had a right to meet a competitor.

Q. Well regardless, didn't you say?

A. No, I didn't say regardless.

Q. Well I will ask you now, was it your idea that you could meet the price of a competitor, regardless of whether it was below the statutory minimum or not?

A. It was our idea to meet a competitive price,—

Q. Regardless of whether it was below the minimum or not, is that right,—lets get that straight.

A. Well I wouldn't say regardless of whether it was below the minimum or not.

Q. Well how would you say it?

A. Well, I—

Q. Well if it was below, you would elect to meet it?

A. How do we know it was below; we don't know what his costs are.

Q. That isn't what I am asking you about?

A. Well then how do we know it is below?

Q. Will you please listen to me, Mr. Christensen, and not argue with me?

A. All right.

Q. If the price of a competitor was not below, you wouldn't worry about meeting it, would you, because you had a legal right to do that; you understood that, didn't you?

[fol. 573] A. If it wasn't below our cost, that is right.

Q. You didn't pay any attention to prices of the competitor that wasn't below; you didn't worry about that, did you? You were sufficiently interested in whether or not you could meet an illegal price when you asked Mr. Crowe whether you could, under the law, meet an illegal price of a competitor,—didn't you?

A. If we could meet the prices.

Q. And he advised you that you had a right, under this law, to meet the illegal prices of a competitor, didn't he,—or did he?

A. No,—no, he didn't say "illegal price"; he said I had a right to meet the price.

Q. Did you ask him if you had the right to meet the price of a competitor which was less than the minimum prodided by law?

A. No, I just asked him if we could meet these prices, based upon our costs.

Q. Then you want this Court, and me, to understand that you made no effort to inquire of Mr. Crowe or anybody else whether or not you could meet the price of a competitor when it was below the statutory minimum?

A. Well, I will repeat what I said a moment ago,—

Q. Well just answer my question, will you, please, if you can?

A. Well I would have to give you the same answer.

[fol. 574] Q. Well what is that answer?

A. That based upon the advice that we received from Mr. Crowe, we could meet—

Q. Any price of a competitor?

A. That is right.

Q. All right now, then I am going to refer to the Enid prices; did you make any effort to ascertain whether or not those pries were less than the statutory minimum?

A. Well I presume—

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[fol. 575] Question: Now Mr. Christensen, you state that a price cut below the statutory minimum, and below any competitor in a community, would trigger a price war?

Answer: Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And you state that your theory in this case is that trading stamps reduce the price, is that correct?

A. Yes, sir.

Q. The issuance of trading stamps over all this period of time did not create any price war, did it,—did they?

A. No, not until someone took it up.

Q. Yes, sir, not until you reduced the prices to meet them,—to meet trading stamps?

A. To meet trading stamps, yes,—the value of trading stamps.

[fol. 576] Q. Now then, Mr. Christensen, we were talking about Exhibit "B" and the items that were advertised at Enid, Oklahoma on the 17th of September, 1954; what were those prices based on?

A. We set these prices, based upon the facts that competition had reduced to these prices prior to the time we met them.

Q. And you featured them in an ad?

A. We probably featured them in an ad subsequent to the time that a competitor had featured them in his ad.

Q. Well if you were basing them on the competitor's price it would have to be after he came out with it, wouldn't it?

A. Yes, sir.

Q. And then you say these are based on a compeitor's price?

A. Yes, sir.

Q. And not on stamps?

A. That is right.

Q. Then I understood you also to say, before we recessed, that it was your policy to meet the price of any competitor?

A. That is right. Our policy is to meet prices, town by town.

Q. And I will ask you to that if you haven't authorized [fol. 577] Templeman, or McCloud, prior to the filing of the suit in July, to call Mr. Larry Bowman on occasions, to get some price cutter in line, with the statement that if they did not get in line that you were going to meet that price?

A. I don't know that I specifically advised, Senator; it was sort of an arrangement between Larry and some of our other boys that were here prior to the time that I came to Oklahoma.

Q. Yes, sir, that is, that if a price cutter came out with an obviously illegal price, your first step was to get Mr. Bowman to get him in line, first, is that right?

A. Well,—

Q. That was the practice, wasn't it?

A. That was the general practice that was being followed for some time, quite some time—

Q. Before you got here?

A. Well that is right, before I got here, and for some time after I got here. It was all quite some time before this stamp thing became an issue.

Q. Yes, sir, and it was your policy to first try to stop

cutting, and if Larry couldn't stop it, to meet it, is that right?

A. Well we didn't make any attempt to stop it; we simply reported it.

Q. I mean, you reported it to Larry?

[fol. 578] A. Yes, sir.

Q. And if Larry didn't get it in line, then it was your policy to meet it, wasn't it?

A. That is right.

Q. And you haven't changed that policy, have you?

A. Well, we haven't called Larry about the price—

Q. Well I am not talking about Larry, I am talking about your policy; you haven't changed your policy in that regard, have you?

A. Our policy relative to calling Larry, you mean?

Q. No, your policy relative to meeting an illegal price?

A. That is right, we haven't changed that policy, except by the injunction, as to meeting an illegal price.

Q. Yes, sir; now then, you recognized these prices here as being illegal prices when you met them, did you not?

A. Based upon our cost, they were illegal prices.

Q. And you recognized them as such?

A. Yes, sir.

Q. And you believed that they were illegal in so far as the Enid merchants were concerned, did you not?

A. Well, we believed they were illegal in so far as the Enid merchants were concerned, but we didn't believe that we were violating the law when we met them.

Q. I understand that, but your idea was that it was less [fol. 579] than cost to the retailer, under the Unfair Sales Act, either on your cost or their cost, is that right?

A. Well based upon our cost, they were.

Q. Or their cost?

A. No, we don't know what their cost was.

Q. Did you make any effort to find out whether they were illegal prices or not?

A. Based upon their costs?

Q. Yes, sir?

A. No, we had no way of checking it.

Q. And you met these prices until October the 15th, 1954, and then you were again restrained, weren't you?

A. Yes, sir.

By Mr. Crowe:

I believe it was the 25th, Mr. Miskovsky.

Q. The 25th, and after you were restrained by this Court then you didn't meet any illegal prices in Enid, did you?

A. That is right.

Q. Then you went to the courts, because you didn't want to violate the Court's order, you went to the court in Enid and filed a suit to restrain them, didn't you?

A. Yes, sir.

Q. You could have filed suit against the Thrif-T-Wise merchants, rather than cut the prices, couldn't you?

A. That is what I understand.

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[fol. 580] Q. What was the basis of the prices offered for sale and sold on those items on of the date of September 24th in Exhibit "B", in Tulsa, Oklahoma?

A. I would have to give you a two-barreled answer on that.

Q. Well give me a two-barreled answer; that is all right.

A. You don't mind that, hu?

Q. No, sir.

A. Well it was either to meet trading stamp competition, or to meet a competitor's price; we didn't cut prices that time.

Q. In other words, you had a double-barreled purpose there, didn't you?

A. Well we could have had, yes, sir.

[fol. 581] Q. Well, do you know?

A. No, I don't know, because—

Q. Well it wouldn't have made any difference to you whether it was to meet trading stamp competition or an illegal price, as a competitor?

A. No, it wouldn't have made any difference.

Q. Well all right; now then, we go over here to Enid, Oklahoma, on September the 21st; were those prices based on trading stamps, or were they based on the illegal price of the competitor?

By Mr. Crowe:

I object to the form of the question; he is asking him about illegal prices of a competitor.

Q. Well all right, were they based on prices of a competitor?

A. They were based upon meeting competitive price.

Q. Did you suspect those prices of being less than cost to the retailer, under the Oklahoma Unfair Sales Act?

A. Based upon our costs, we suspected those to be below.

Q. You had reason to believe that they were illegal prices?

A. Yes, sir.

Q. And you had conducted surveys here in Oklahoma City [fol. 582] and in Norman, and you knew how to arrive at the problem of cost, didn't you?

A. Oh, yes.

Q. You knew the market?

A. The market?

Q. You knew what the market was on these commodities?

A. You mean the wholesale price?

Q. Yes, sir.

A. Well we thought we did; we knew what ours was.

Q. You were familiar with Robinson-Patman Act?

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Q. In other words, you knew how to arrive at the probable cost and determine whether it was legal or illegal, didn't you?

A. Yes, sir.

Q. And you had your ideas about it, but you conducted no survey and made no effort to determine whether theirs were legal or illegal prices, did you,—set forth in the Enid ad,—the Enid prices of the 21st,—you made no effort to determine whether they were legal or illegal, in so far as the competitor was concerned, is that right?

A. Well, except based upon our costs. That is what we [fol. 583] determined they were illegal by, in our opinion.

Q. Yes, sir, they were less than the cost to the retailer, based on your costs, is that right?

A. Yes, sir.

Q. And your competitors can't buy any cheaper than you can, can they?

A. Well we don't think so, but of course we have found some instances that they do.

Q. Well in any of these instances did you find that they did?

A. I couldn't be sure.

Q. Did you make any effort to determine whether they did?

A. Whether they did what?

Q. Buy for less than you do, on any of those items under Enid, September 21st, '54?

A. I couldn't tell you whether or not we made any check on this particular group of items, but from time to time we did check with the jobber to determine whether or not they could buy them cheaper.

Q. All right, but you knew whether or not, didn't you Mr. Christensen, that no independent merchant in Oklahoma could buy Tide any cheaper than you could, don't you?

A. I don't know that.

Q. Well, can they or not?

[fol. 584] A. I don't know where they can.

Q. On the market, can they?

A. I don't know.

Q. Do you know whether or not they could buy Milnot any cheaper than you can?

A. I would have to give you the same answer to that.

Q. You don't know about any of these items?

A. No, I don't know we don't buy at the same source they do.

Q. Who do you buy from?

A. We buy, most likely, in such instances as those, directly from the supplier.

Q. Well how did you determine that the prices, in the surveys that you conducted in Oklahoma City, for example, were less than the cost to the retailer, in so far as the Thrif-T-Wise merchants were concerned?

A. Simply by using our costs.

Q. By using your costs.

A. In each instance we listed them as probable costs.

Q. And based on your costs, you feel that all of those

in the surveys were lest than cost to the retailer, when the stamps were applied to it, is that right?

A. Yes, sir, based upon our cost.

Q. And based upon your cost, you feel that,—and felt at the time, that the September 21st items here in Enid were [fol. 585] less than the cost to the retailer, is that not correct?

A. Well, they were at least below statutory,—I don't know whether they were below cost or not.

Q. Below the statutory minimum,—you felt that they were?

A. Yes, sir.

Q. And felt that they were when you met them?

A. We felt that they were when we met them, yes, sir.

Q. In Norman, Oklahoma,—beans, sugar and coffee, under the same date, the 21st; what was your basis for your prices there, stamps, or the price of a competitor?

A. Again, I would have to say it was one of the two.

Q. Well which one was it?

A. I don't know.

Q. One or the other, or both?

A. One or the other, or both.

Q. All right, September 22nd, 1954, Oklahoma City; was that entirely stamps?

A. It very likely was.

Q. By that time others were meeting the price that you had set, is that right,—Standard Humpty-Dumpty did, didn't they?

A. By what time?

Q. By September the 22nd, 1954?

A. Well, I don't know whether they were at that time, or not, but it was about that time.

[fol. 586] Q. Yes, sir, and they came down to the price that you set under the theory of meeting trading stamp competition, didn't they?

A. That is right.

Q. And other big independents did, didn't they?

A. I think they did.

Q. Now then the Thrif-T-Wise merchants didn't, after you reduced your price to meet the alleged value of trading

stamps, they didn't again come down and meet your price and give stamps too, did they?

A. I think they were in a pinch; I don't believe they did.

Q. You don't believe they did?

A. No, I don't believe they did.

Q. Had they done so, then you would have gone down again by the value of the stamps, wouldn't you?

A. That is correct.

Q. All right, and if the Court didn't enjoine you, and that happened, that is what you would do now, wouldn't you?

A. Oh, sure.

Q. Yes, sir, then it would lead to a viscious price was, wouldn't it, if you weren't restrained and enjoined from meeting trading stamp competition?

A. It likely would.

Q. Yes, sir. Now on September the 24th, 1954, the ads [fol. 587] there, were they based on the theory of meeting trading stamps?

A. Very likely.

Q. Enid, Oklahoma, under the same date, were they based on meeting trading stamps, or the price of a competitor?

A. The price of a competitor.

Q. Which you felt were violative of the Unfair Sales Act?

A. Yes, sir.

Q. September the 29th, 1954, Oklahoma City; was that based on trading stamps?

A. Yes, sir.

Q. October the 1st, 1954, Oklahoma City; was that on the theory of meeting trading stamp competition, the prices therein?

A. It very likely was.

Q. Enid, Oklahoma, the same date; what was the basis of that?

A. That was,—the basis for that was, we were meeting a competitor's price.

Q. Which you felt was less than the statutory minimum?

A. Well, if it was below the statutory minimum we met it, anyway.

Q. Now I will ask you, directing your attention,—you felt

[fol. 588] that that was the statutory minimum, or you would have met it regardless, is that right?

A. Well we would have met it regardless, yes, sir.

Q. All right, whether it was or wasn't?

A. Yes, sir.

Q. Now,—

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Q. Now would your answer as to these other dates be substantially in the same tenor as that, is that correct?

A. I believe so.

Q. Now then, after this suit was filed, and you were restrained from advertising, offering for sale and selling merchandise for less than the statutory minimum, and you stopped that practice under the theory of meeting trading stamp competition, the Thrif-T-Wise merchants, who you testified were in the habit of,—were giving double stamps on Wednesdays, they voluntarily gave up double stamps, did they not, during the pendency of this suit?

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[fol. 589] A. I think it was March of the following year.

Q. You discontinued it, did you?

A. No, you did.

Q. I mean they discontinued double stamps?

A. I think they were discontinued in March of the following year, after this suit was filed in October.

Q. In March of the following year, during the pendendy of this suit, the Thrif-T-Wise merchants gave up double stamps, did they not?

A. That is right.

Q. Thereafter you commenced the practice of giving, with your merchandise,—the sale of your merchandise, cash-saver stamps, did you not, worth 1½ cents on each fifty cent purchase?

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[fol. 591] Q. You started the practice of giving single stamps, single cash-saver stamps, valued at 1½ cents with each fifty cent purchase during the week, and double stamps on Wednesday, did you not?

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Q. You were giving double cash-saver stamps on Wednesdays, were you not?

A. At what time?

Q. After the Thrif-T-Wise merchants gave up the practice of double stamps?

A. I think it was at about the same time.

Q. Now to refresh your memory. I will ask you to state if it isn't a fact that the Thrif-T-Wise merchants voluntarily [fol. 592] and publicly, announced the discontinuance of the double stamp practice before you came out with a cash-saver program, I will ask you if that isn't a fact?

A. I think about a week before.

Q. Yes, sir?

A. Probably just about the time they found out we were coming out with some.

Q. Probably about the time they though you were coming out with some?

A. We were going to use the cash-saver coupons, and they discontinued the double stamp deal.

Q. Well how did they know what you were coming out with?

A. That is a pretty good question, but I can't answer it.

Q. You can't answer it?

A. No.

Q. All right, now then, you commenced,—after they quit, you commenced giving double cash saver stamps with each fifty cent purchase, did you not?

A. On Wednesdays.

Q. I beg your pardon?

A. On Wednesdays.

Q. On Wednesdays,—you were not meeting any Thrif-T-Wise competition with those double stamps, were you, because they weren't giving them, were they?

[fol. 593] A. Well let me explain that,—

Q. Answer my question "yes" or "no".

A. No, I can't answer it unless you let me explain it, please sir.

Q. No,—were you meeting it,—then explain it.

A. Our program was already set up to meet the Thrif-T-Wise stamp program that was set up,—we had our ad prepared, and everything, and you discontinued about the week

before ours came out and we couldn't do anything about it,—our ads were all prepared, they had to run. We don't know why you quit.

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Q. You continued giving double stamps for how long?

A. Until we were restrained,—I think about two or three weeks.

[fol. 594] Q. Two or three weeks; what was your intent in giving double cash-saver stamps, after Thrif-T-Wise had voluntarily given up that practice?

A. Well there were other competitors, trading stamp competitors, who continued to give double trading stamps after Thrif-T-Wise gave it up.

Q. Oh,—who,—which competitors was giving double stamps after Thrif-T-Wise gave it up?

A. There were probably three or four in the market; I think our price maker could tell you specifically who they were, I couldn't tell you.

Q. Do you know of any?

A. I know that there were; I can't give you their names, because I,—without checking them.

Q. You can't give their names?

A. That is right.

Q. Did any significant competition give double stamps in the Oklahoma City-Midwest City area?

A. At which time?

Q. At the time we are talking about?

A. You mean after you gave them up?

Q. Yes, after the Thrif-T-Wise merchants gave them up?

A. Yes, sir.

Q. What was that significant competition?

A. I think our price maker will verify that Spencer's [fol. 595] in Midwest City was giving double stamps long after you discontinued them, and even after,—probably after we discontinued them.

Q. Now your Midwest City store, is that the only one you can think of?

A. No, there were others.

Q. Auto Aurora was your manager out there, wasn't he?
A. I can't recall whether he was at that time or not.
Q. Trading stamps weren't hurting you in Midwest City, were they?
A. Trading stamps weren't?
Q. I am asking you, were they?
A. Yes, they were.
Q. I am asking you if it isn't a fact that your volume, all during the time, that it continued to increase in Midwest City, up until the time this suit was filed?
A. It is still increasing.
Q. It is still increasing?
A. Yes.
Q. Yes, sir; now you say you cut the prices to meet the stamps with three things in mind, and that is to meet the lower price of a competitor, to get a decision,—or two purposes,—or to get a decision, is that right?
A. That is right, for the two purposes, not three.
Q. Two purposes?
[fol. 596] A. Yes, first, to comply with our policy of meeting competitors' price from town to town, and secondly, to try to determine whether or not the value of trading stamps represented a reduction in retail price.

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By Mr. Watts:

Question: Mr. Christensen, this stamp question first became a problem to you in the Spring of 1953, you say?
Answer: No, in the Fall of 1952.

Q. And in the Spring of '53 it became a sufficient problem in Norman to where you had a survey made?

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[fol. 597] Q. And you have that survey there in your hand?
A. Yes, sir.
Q. What number is that Exhibit?
A. That is Exhibit No. 15.
Q. Now the summary of that survey is only that the

volume, or apparent business,—on the stamp business of retail merchants, is that right,—on Wednesday?

A. It shows that it was taken on Wednesday.

Q. That is not what I asked you; does the instrument show that the volume was increased in these particular stores on Wednesday?

A. In the stamp stores on Wednesday, yes.

Q. Now you say that stamps were diverting trade,—you can't tell from that exhibit whether it was diverting trade from one of your stores or whether it was diverting trade that was in the same store later in the week, can you?

A. It was diverting trade, you can tell it was,—it is obvious.

Q. Well Mr. Christensen,—I understand,—my question to you, you cannot tell, from that exhibit, where the trade was diverted from, can you? Can you or not,—"yes" or "no"?

A. Yes, I can.

Q. All right, you tell me what store that trade was diverted from?

A. It was diverted from our store, for one.

Q. Well how do you know?

[fol. 598] A. Because, on other days of the week, when they weren't giving double stamps, our customer traffic picked up, and there could be no earthly reason other than the fact that they were giving double stamps.

Q. Now where does that show that your entire customer traffic picked up,—is it on the competitive analysis?

A. Yes, sir, that is right, and if you will take Thursday and Tuesday, you will find that our customer traffic was in excess of those that were giving those stamps on Wednesdays.

Q. That is what I say, but on Wednesday their traffic was relatively in excess of yours?

A. That is right.

Q. Well how can you tell from that; perhaps it brought in some of their Friday and Saturday traffic there, on traffic that had never been into your store, but had gone into their store on Wednesday,—how do you know?

A. Because there is nothing else,—you go down there right now and find that this same ratio doesn't exist, since

we are giving stamps and they are too, and it is down to one instead of two.

Q. Mr. Christensen, I asked you, from this exhibit, if you could tell that they got your customers or whether they merely brought in their own on Wednesday, and especially Saturday? Can you, from that exhibit?

[fol. 599] A. I think I can.

Q. You, sir, can do it?

A. Yes, sir.

Q. But there is nothing on that exhibit that tells you that, is there?

A. Nothing on the exhibit that tells you that?

Q. Now what other investigation did you make in Norman, other than that one investigation?

A. Well after that we made,—Oxford made a survey.

Q. Will you pick that up there, please sir?

A. I don't believe I have it.

By Mr. Crowe:

(Handing instrument to witness) Now that is not in evidence.

By Mr. Watts:

Well I am going to put it in.

By Mr. Crowe:

I offered it, and it was excluded.

By Mr. Watts:

Well I will withdraw our objection.

By Mr. Crowe:

All right, it is Exhibit No. 16,—is it admitted in evidence?

By the Court:

Yes, sir.

[fol. 600] Q. Now Mr. Christensen, you concluded in your first statement that the thing that was giving you trouble

in Norman was the stamp stores,—stamps being given by the stamp stores?

A. Well I didn't say that was causing our trouble.

Q. You weren't having trouble in Norman?

A. No, I never did say that. I said that we found that trading stamp merchants, dealing in trading stamps, were increasing their traffic sufficiently on Wednesdays, by giving double stamps, to cause us to be concerned.

Q. And you had the Oxford report run?

A. Yes, sir.

Q. And what did you decide to do after you got that Oxford report?

A. Well, the Oxford report was probably a further basis for us deciding to approach the County Attorney with the proposition that, here is the evidence, what do you think about it,—what do you think should be done about it, or will you do something about it.

Q. Now Mr. Christensen, did you ever check your own volume in Norman to ascertain if the stamp stores were getting any of your volume, or if your volume was decreasing, increasing, or remaining static?

A. To determine if they were getting any of our volume?

Q. Yes, sir.

[fol. 601] A. No, we never made any such survey.

Q. So you didn't know that, from the check of your volume, whether you had lost one, or ten customers, did you?

A. No, I don't follow you very well; we made no such check.

Q. All right, no check was made of your volume; then after you got the Oxford report, you elected to go to the Norman County Attorney?

A. I think that is right, sir.

Q. Would you read, especially, the last two paragraphs of that first page on the report? Just read them out loud, please.

A. This third paragraph?

Q. Yes, sir.

A. "However, our survey gives strong indications that stamp or premium plans are not insurmountable,—an insurmountable threat, and that customers can be influenced

more by other store qualities than by stamp plans. For example, Norman women who said they shopped at Riteway because it was a new, attractive store outnumbered those who said they went there because of the premium plan".

Q. Now read the next paragraph.

A. "Our own performance in Norman indicates we can hold our own against a competitor with better store facilities and a very attractive premium plan—and in paren-
[fol. 602] thsis,—Riteway. Among Norman families, almost as many shop regularly at Safeway, thirty-seven per cent, as at Riteway, thirty-eight per cent, and on the basis of our customer count we estimate that Riteway's sales are only about $1,600.00 a week higher than ours. Uhle's is in a poor third place with an estimated $12,000.) We have the best reputation of any food store for low prices,"—do you want me to read that over again?

Q. That is all right, go ahead?

A. "—quality produce and friendly employees. However, we could show improvement relative to competitors on the attractiveness of our store, our selection of groceries and our meats."

Q. Now with a less attractive store in Norman, and apprently less investment, you were within one per cent of your stamp competitor, weren't you?

A. At that time, yes, sir.

Q. And you still desired to increase your volume and prevent him from diverting trade from your store?

A. We didn't want him to divert trade from our store, that is very true.

Q. Did you ever discuss, with Mr. Warren, or anyone connected with your firm, the possibility of giving stamps, of your Company giving stamps at Norman,—didn't you so testify in one of these depositions?

[fol. 603] A. I did talk to him earlier, of the feasibility of giving stamps,—to what extent, I couldn't exactly relate, because Mr. Warren was very much opposed to stamps, and that ended the conversation.

* * * * * * *

By Mr. Watts:

We offer Exhibit No. 21 in evidence.

By Mr. Crowe:

We object to it for the reason that it is beyond the,—outside of the issues in this law suit.

[fol. 604] By the Court:

The objection will be sustained.

Q. Now then, Mr. Christensen, did you make any analysis of the volume of Safeway in Oklahoma City with respect to whether you were losing customers as the result of green stamp competition?

A. Well repeat that question, please.

Q. Did you make any examination, or investigation, or analysis, of Safeway's volume in Oklahoma City to ascertain if Safeway was losing customers as a result of stamp competition?

A. Yes, I had it made.

Q. All right, what percentage of volume did you ascertain that Safeway was losing to stamp competition in 1954?

A. I didn't ascertain any particular percentage.

Q. Did you ascertain that any percentage, or any specific volume was being lost by Safeway in 1953 or 1954, as a result of stamp competition?

A. We ascertained that Thrif-T-Wise volume was increasing, and it had to come from, not only our stores, but anybody else who wasn't handling stamps.

Q. In other words then, you made no analysis of your own volume, with respect to stamp competition, "yes" or "no"?

A. No analysis,—we made an analysis of our volume [fol. 605] every week.

Q. With respect to stamp competition?

A. Well with respect to any kind of competition, and all kinds of competition.

Q. Well, did you conclude then, from the analysis of your volume made weekly, that the stamp competition was affecting your trade, and if so, in what manner and how much?

A. The analysis that we made was that traffic was increasing in these stores that were giving stamps.

Q. Yes, sir, but you are not answering my question,

please sir,—go ahead though, and answer it in your own way.

A. But as far as dollars and cents volume that might be leaving one store,—any particular store, and going to a trading stamp store, I don't think you could conduct a survey that would give you that kind of information.

Q. Well you made no such analysis?

A. No, sir.

Q. And you arrived at no such conclusion?

A. That is right.

Q. You did conclude, however, that the traffic was greater in stamp stores on Wednesdays than it was on the rest of the week?

A. That is right.

Q. But you made no study to ascertain where this traffic came from?

A. No, sir.

[fol. 606] Q. Sir?

A. No, we did not.

Q. Then, except for your conclusions, or your own inference that it came from other than that store, you have no tangible evidence upon which to base such conclusion?

A. Well, we think our conclusions are tangible, but if you don't think so, that is all right.

Q. Well there is no evidence, other than these purchasing surveys that you made, is there?

A. No other surveys, no.

Q. And those purchasing surveys consisted only in purchasing certain items in certain stores?

A. Well, and counting customers.

Q. Now, Mr. Christensen, after counting customers you then stated that you concluded that you would cut prices by an amount equivalent to what you computed the value of the stamps to be, is that right?

A. We then,—what period are you speaking of?

Q. Well after you had made these analysis, and refering your attention directly to Exhibit No. 17?

A. Well after these surveys, then is when we went to the County Attorney,—I think that is the time when we went to the County Attorney.

Q. Yes, sir, and the County Attorney refused to take action?

[fol. 607] A. Well, in effect, that is right.

Q. And at that time I will ask you if you didn't discuss with your attorney, and he did not point out to you, these alternatives; Number 1, you could give stamps yourself; Number 2, you could cut prices; Number 3, you could file a civil injunction suit to test out the validity of stamps by the stamp merchants?

A. Well he didn't advise us to do either one of those three things, or even say that we could do either one of these three things.

Q. Well you knew of your own knowledge, after many years in the grocery business, that you had either one of those three alternatives, and that you could select, of your own volition, either one of them, didn't you?

A. Well, we didn't debate that subject, but we knew,—oh, we knew that we could do either one of the three,—thought we could, yes.

Q. And you elected to cut prices?

A. No, we didn't elect to cut prices; we elected to reduce prices to meet trading stamp competition.

Q. Well that would be cutting them, when you reduced them, wouldn't it?

A. Well I know, but the significance of the statement that you made is a little different from what I get.

Q. Well I will re-state my question; you elected to re-

[fol. 608] duce prices?

A. That is right, to meet trading stamp competition.

Q. And you intended to reduce prices?

A. Yes, sir.

Q. As I remember your statement this morning, you intended to reduce your prices so that it would make available your new low price schedule in all of your stores in the Oklahoma City area?

A. We felt that it would increase competition.

Q. Now then by lowering prices, does that not divert trade from stores who do not lower their prices?

* * * * * * *

Q. Now Mr. Christensen, in continuation of that testimony that you gave this morning—now I want this map

marked as an exhibit. (Instrument marked Plaintiff's Ex-
[fol. 609] hibit "J") And pointing out to you Plaintiff's Exhibit "J", which is a location map of the Oklahoma City area, with red pins for Safeway locations; blue pins, Humpty-Dumpty locations; green, I.G.A.; light blue, Red Bud; Yellow, Thrif-T-Wise; black; Members of the Association who do not give stamps, or do not belong to I.G.A. or Thrif-T-Wise; and white, non-members of the Association.

A. Did you say 'who did not give stamps'?

Q. I understand who do not give stamps.

A. Well they may not be giving stamps today,

Q. Well I am talking about, Mr. Christensen, in July of 1954?

A. Oh, excuse me sir.

Q. Now let me ask you if you know what per cent of your competition is stamp stores, that you have to compete with?

. . . . . .

[fol. 610] Q. In other words, Mr. Christensen, were the stamp stores, roughly speaking, ten per cent of your competition, five per cent, or thirty per cent, or what percentage?

A. Well I think the stamp stores were in competition with all of our stores.

Q. Well I understand, but the volume of the stamp stores, Mr. Christensen, so far as they were concerned?

A. Well I don't know what the volume of the stamp stores were.

Q. Well I am not asking you in dollars and cents, I am asking you, roughly, percentage-wise?

. . . . . .

[fol. 611] A. Well I really don't,—I don't understand it.

Q. Well do you know how many stures you checked on?

A. Well, this survey right here,—seven, or eight, or nine.

Q. In other words, you checked on less than ten stores?

A. Probably less than ten, yes.

Q. And those were the competition that you were meeting?

A. As far as trading stamps were concerned?

Q. No, as far as your price cut was concerned?

A. No,—no, we were meeting anybody that was issuing trading stamps, any merchant that was issuing trading stamps, we were meeting that competition.

Q. But the only ones that you checked on were the ones you outlined in that survey?

A. Well we used that as evidece, if you will permit me to use that term.

• • • • • • •

[fol. 612] By Mr. Miskovsky:

Let me interrupt, to make this stipulation if your Honor please, make an exhibit here to show how many Thrif-T-Wise stores there were in the community at that time, and which ones were doing cash business, and which ones were doing credit business, and for that purpose we offer Plaintiff's Exhibit "K" in evidence, it is a list, showing that information.

By the Court:

It will be admitted.

Q. Mr. Christensen, roughly, do you know how many retail outlets there are in Oklahoma City?

A. I seem to recall that Mr. Larry Bowman told me at one time that there could be close to four hundred retail stores,—that includes all the Mamma and Papa stores, and every type of retail food store.

Q. And how many of those stores are Safeway stores?

A. Sixteen.

Q. And Safeway Stores, if I remember your testimony, did about seventeen per cent of the business, the total volume?

A. That is about right.

[fol. 613] Q. Now then, Mr. Christensen, directing your attention to Exhibit "J", I will ask you if there are not many Safeway Stores, such as the one to which I am pointing with my pen,—this one here (indicating on exhibit), this one here, and this one, and this one, and this one, this one, this one, and many others there, that do not have either I.G.A. or Thrif-T-Wise competition?

A. Well I would say that most of our stores have either Thrif-T-Wise or I.G.A. competition.

Q. Well now directing your attention to the one where I am pointing my pencil, right here, could you tell me what—

A. Is that down on South Walker,—I don't see any Thrif-T-Wise store down there, but there may have been a trading stamp store.

Q. Do you see an I.G.A. store down there?

A. Is that a black pin?

Q. It is a green pin.

A. Well I can't hardly tell the difference between them, the green and the black.

Q. Now then, Mr. Christensen, I have this last question for you; what is the effect of your cutting prices in the Safeway Stores, upon a non-stamp store in the vicinity of the Safeway store where prices are cut?

. . . . . .

[fol. 614] A. Repeat the question, please.

Q. I say, what was the effect, Mr. Christensen, upon the non-stamp store—

A. I don't know.

Q. —well just a minute, let me finish; of Safeway having cut prices in a nearby store, in so far as diverting trade from a non-stamp store into Safeway would be concerned?

A. Well I don't know what the effect was, because I don't know how it would affect the other store's volume.

Q. From your opinion, Mr. Christensen, as a grocerman, what do you think the effect would be?

A. In my opinion, as a groceryman, I would be of the opinion that reducing prices that a competitor didn't meet would tend to create customer traffic in the store where the prices were reduced.

Q. And take that traffic away from a non-reducing store [fol. 615] near by?

A. From some other store.

By Mr. Watts:

That is all.

Now we do want to offer this Exhibit "J" in evidence, if the Court please.

. . . . . .

[fol. 616] By the Court:

Very well, it will be admitted.

* * * * * * *

Redirect examination.

By Mr. Crowe:

Question: Mr. Christensen, on cross examination counsel asked you if you requested a written opinion from your attorneys with reference to your rights to meet trading stamp competition, and I hand you Exhibit No. 21 and ask you to state what that is?

By the Witness:

Answer: That is a letter that I wrote to you January the 30th.

Q. What year?

A. 1953.

[fol. 617] Q. Is that the original, signed by you?

A. Yes, sir.

Q. Very well; I hand you Exhibit No. 22 and ask you to state what that is?

A. This is an answer to my letter of January,—

Q. It is a copy of a letter from us, dated when?

A. Dated January the 4th, 1953.

Q. Is that a written opinion which counsel asked you about on cross examination?

A. Yes, sir.

By Mr. Crowe:

We offer in evidence Defendant's Exhibits No. 21 and No. 22.

By the Court:

The Exhibits will be admitted.

Q. Mr. Christensen, on cross examination Mr. Watts asked you a moment ago whether or not a survey was made in Oklahoma City with reference to the importance of

double stamp days, and I hand you what has been marked Defendant's Exhibit No. 23, and ask you to state what that is?

A. That is a survey dated August 17th, 1954, relating to the importance of double stamp days, made by Oxford Business Surveys.

Q. I believe you told him, on cross examination, that you did have one made; is this the one you had in mind, in Oklahoma City?

• • • • • • •

[fol. 618] A. Well I don't know whether it was this survey or one of the others; he asked me about several of them.

Q. Well this is a survey made in Oklahoma City?

A. Yes, sir.

By Mr. Crowe:

I would like to offer it in evidence.

• • • • • • •

I am offering it only for the purpose only of showing the information upon which they acted, your Honor, and not as proof of the facts therein contained.

• • • • • • •

[fol. 619] By Mr. Crowe:

If they want to check that, I will go ahead with my examination of the witness.

Q. Mr. Christensen, Mr. Miskovsky or Mr. Watts, one of them, did ask you on cross examination about not having reduced the prices on all the items as to which I. G. A. members and Thrif-T-Wise were conpetitive with you; do you remember that question?

A. Yes, sir.

Q. I hand you what has been marked Defendant's Exhibit No. 24 and ask you to state what that is?

A. This is an ad that Safeway ran in The Daily Oklahoman on January the 26th, 1955, which compares Safeway's prices with the prices of five trading stamp stores.

Q. Were the prices run in that ad the prices at which you sold the articles mentioned in the ad?

A. Yes, sir.

Q. Do you recall about how many articles of merchandise were included in it?

A. Oh, I think it is on there some place.

Q. It is a double page ad?

A. Yes, sir.

[fol. 620] Q. And it is the ad the Safeway ran?

A. Yes,—there are 340 prices, it says here in the ad.

By Mr. Crowe:

I would like to offer in evidence the Defendant's Exhibit No. 24.

* * * * * * *

[fol. 621] By the Court:

I don't see the materiality of this; the objection will be sustained.

By Mr. Crowe:

Exception.

By Mr. Watts:

We have no objection to Exhibit No. 23 here.

By Mr. Crowe:

All right, is Exhibit No. 23 admitted?

By the Court:

Yes.

Q. Mr. Christensen, Mr. Miskovsky inquired in considerable length about what advice I gave you with reference to meeting competition; do you remember that,—meeting the price of a competitor?

A. You mean where he said irregardless of whether it was illegal or not?

Q. That is right.

A. Yes, I remember that.

[fol. 622] Q. You remember he was inquiring about what advice you got from me?

A. Yes, sir.

Q. Will you tell the Court what legal advice I gave you as to your rights to meet the price of a competitor,—as he remembers?

• • • • • • • •

A. Well you told me that I could meet an illegal price, because meeting the price,—just meeting an illegal price by itself did not constitute a violation, that you had to [fol. 623] have wrongful intent; that they had to show that we were diverting trade or trying to monopolize, and in meeting the price, wouldn't prove any of those things.

• • • • • • • •

By Mr. Swinford:

Question: Mr. Christensen, you testified as to prices charged in the outside towns, outside of Oklahoma City and Midwest City?

By the Witness:

Answer: Yes, sir.

Q. I believe the question has been asked you if, at the time you met those prices, if you knew they were illegal; now did you, personally, know that those prices that were being charged in Norman, or Shawnee, or Tulsa, or any of the other towns,—

• • • • • • • •

[fol. 624] Q. —other than the indication,—could you tell us?

A. Not personally.

Q. How was it operated,—now tell us?

A. Well our price maker,—in the case of Enid, the local boys checked the prices,—checked the competitor's advertised prices, and reported to the price maker, and the price maker gave them authority to reduce the price, but I don't personally tell them to reduce each individual price, when the competitor reduces the price below what we refer to as the statutory minimum.

Q. Well when did you first know that those particular prices that they inquired about were being charged at Enid?

A. Well these specific prices, probably I never knew about until just now, because I had never read the Petition before.

Q. All right, there was nothing, in your observation, which called those prices to your attention prior to the time this litigation started, is that right?

A. That is right, except that I had a general knowledge, first, of competition in the market that was reducing prices below what, based upon our costs, were below the legal minimum.

[fol. 625] Q. Yes, but those reductions were made by the store manager, and not by you?

A. That is right.

Q. And you had no occasion to inquire, at the time the reductions were made, as to whether they were lawful or unlawful prices, is that right?

A. That is right.

* * * * * * *

Re-cross examination.

By Mr. Miskovsky:

Question: Mr. Christensen, where are the ads made up, in which the prices are met; are they made up in your headquarters, or are they made up by the store manager?

By the Witness:

Answer: They are made up,—the skeleton of the ad is made up in the zone office. Some of the prices are filled in there, and then later on prices by the store managers are filled in, based upon what the local competitive situation is.

Q. Who finally approves the ad?

A. The location manager.

Q. Who finally approves the ad that is run in,—say The Daily Oklahoman?

[fol. 626] A. In The Daily Oklahoman?

Q. Do you do that, or—

A. No, I don't.

Q. —or do all the store managers get together and approve it, or does someone in your office?

A. No,—no, I thought you had reference to outlying towns.

Q. I am talking about Oklahoma City?

A. All right, if you will say that I will be glad to answer it.

Q. Yes, sir?

A. The Oklahoma City advertising manager finally sets in the prices that are run in the paper.

Q. Yes, sir,—

A. After some coloboration with the price maker.

Q. When the question of meeting an illegal price presents itself, whose decision,—who makes the decision on that item?

* * * * * * *

[fol. 627] Q. Anywhere in the State, Mr. Christensen, where the question of meeting an illegal price,—when the question of meeting an illegal price in Oklahoma City, who decides the question of whether it shall be met or not?

A. That would rest with the price maker in Oklahoma City, if it involves Oklahoma City.

Q. And he has authority to do so?

A. That is right.

Q. And he has done so?

A. Well, at what time?

Q. June and August?

A. During what period?

Q. In the past?

A. In the past?

Q. Yes, sir, prior to any injunction,—and would continue to do so in the future, unless enjoined?

A. Yes, sir.

* * * * * * *

Q. All right; now who made the decision not to seek an injunction, but to resort to price cutting to test this issue?

A. Who made the decision?

Q. Yes, sir.

[fol. 628] A. I made the decision.

Q. Was that by and with the consent of Oakland?

A. No,—it was after talking with them, with Mr. Warren about it, out of Oakland.

Q. Mr. Crowe told you you could meet an illegal price, and if you did, they would have to prove that, but they would also have to prove what you intended, is that correct?

A. Now you say "they",—what do you mean?

Q. Well that is what you said, "they" would have to prove your intent; who did you mean by "they"?

A. No. I said it had to accompany, I believe, the intent to destroy competition or divert trade.

Q. Then Mr. Crowe advised you that if you cut the price, to meet an illegal price, you could do that, and if you did it, that it would be incumbent upon the County Attorney, if he prosecuted you, or if you were sued by someone to restrain you from doing that, that it would be incumbent upon them to prove an intent provided for by the law, is that right?

A. Well now he didn't say that.

Q. He didn't?

A. No, he didn't,—he didn't say those same words.

Q. Well what did he say about that,—I want to get that straight?

A. Well, I will try to say the same thing that I said [fol. 629] a few moments ago.

Q. Well all right, do that?

A. Well, he said that just meeting a price, by itself,—

Q. Well now I am talking about illegal prices?

A. —he said just meeting an illegal price, by itself, was not a violation of the law, but it had to be accompanied by a wrongful intent, which included, I presume, the diverting of trade, destroying competition, and so forth.

* * * * * * *

[fol. 630] (Witness excused)

By the Court:

The defendant may call its next witness.

By Mr. Swinford:

We would like to call Mr. John McCloud as our next witness, if the Court please.

* * * * * * *

[fol. 631] Direct examination.

By Mr. Swinford:

Question: State your name, please?

By the Witness:

Answer: John McCloud.

Q. You are price maker for Safeway in the Oklahoma City zone?

A. That is right.

Q. How long have you been price maker here, Mr. McCloud?

A. I have been price maker about four years.

Q. How long have you worked for Safeway?

A. Twenty-two years.

Q. Inquiry has been made as to whether Safeway was specifically giving double stamps after the S & H Stamp Company announced that they would cease that practice after about March the 15th, 1955; were there other grocery merchants giving double stamps during that time,—can you name them?

A. Well to the best of my knowledge, Whittaker, at at [fol. 632] that time, had two stores giving stamps, and one giving cash register receipts, and Spencers, and Stockton's two stores.

Q. Were all four of those stores effective competitors of Safeway?

A. Yes, sir, they are.

Q. And they were giving double stamps on Wednesday of each week?

A. That is right.

Q. Mr. McCloud, I hand you Defendant's Exhibit No. 10, which, for the purpose of the record, or rather for the benefit of counsel, I would like to say are the identical exhibits which appear on the Cross-Petition of the defendant, Safeway, against Speed, and ask you to state whether or not you have obtained, by agreement, the exact cost which Speed incurred on the items listed on those exhibits, and in issue in this case?

A. I have.

Q. You have been delivered the I.G.A. cost books, have you?

A. That is right.

Q. For the various dates shown on each of those exhibits?

A. That is right.

Q. And from those I.G.A. cost books, being the exact [fol. 633] cost to speed, you have set opposite the name of each article thereon, on the dates in question, the cost to him of those articles, is that right?

A. I have, yes, sir.

Q. Do those costs vary, materially, from the original costs set forth in that exhibit?

A. Not materially from the original costs, no.

Q. All right, now in addition to that information on the exhibit, have you also computed in the right hand column, an additional column which does not appear upon the original exhibit, showing the percentage of mark-on,—or mark-up, rather, by the effect of the giving of stamps, as shown thereon?

A. I have.

Q. On each of those pages?

A. Yes, sir,—oh, no,—not on each page; on enought pages to show the trend, as the items are repetition on different pages,—based on our costs.

Q. Based on your costs?

A. Yes.

Q. Computed?

A. Yes, that is right.

Q. Now on Exhibit "C", you have made the same computation, based upon Speed's cost, is that correct?

A. That is right.

[fol. 634] Q. And so you have two additional columns, in pencil, on Exhibit "C", and the one on the extreme right shows the exact percentage of mark-up that Speed had, after giving effect to the stamps at the rate of 5.6 on that particular Wednesday, is that right?

A. That is right.

Q. Will you tell us, please, on that one Exhibit only, what is the highest mark-up he had, and what is the lowest?

A. Well,—

. . . . . .

By Mr. Crowe:

Excuse me gentlemen, but I think you should call the Exhibit number.

By the Court:

He has referred to Exhibit No. 10.

By Mr. Crowe:

Well Exhibit No. 10 covers Exhibits "A" through "P".

[fol. 635] By Mr. Swinford:

I will cover that when I get through here.

* * * * * * *

A. The highest percentage was 3.27 per cent; the lowest was 3.75 per cent, loss.

Q. That is the minus figure?

A. Yes, that is right.

Q. Now the testimony you have just been giving is in reference to the Defendant's Exhibit No. 10; you have made those computations on the exhibits which are marked "C" to "O", inclusive, is that correct?

A. That is correct.

By Mr. Swinford:

We offer it in evidence, if the Court please.

* * * * * * *

By the Court:

Very well, it will be admitted.

Q. Mr. McCloud, I wonder if you would tell us, briefly, what the chain of command is in Safeway?

A. In the State of Oklahoma, you mean?

Q. Yes?

[fol. 636] A. Mr. Christensen is Division Manager; Mr. Templeman is Zone Manager, and is my immediate superior.

Q. And you are the price maker?

A. That is right.

Q. Will you tell us, please sir, how the prices are established in Oklahoma City, the retail prices, to be charged in your store?

A. Well, they are based on our landed cost in the warehouse, and of course we try to establish what a reasonable mark-up we should have, and then consider competitive conditions,—what price we will retail the items at.

Q. And who establishes those prices?

A. I do.

Q. You do; all right, that is in Oklahoma City and Midwest City?

A. That is right.

Q. Does the method of establishing prices in the outlying towns in this zone differ from that?

A. The only difference is, the managers in the outlying locations have authority to reduce prices to meet competition.

Q. Well, go back a little further; how do they get their initial price?

A. The same as the Oklahoma City stores.

Q. You send it to them?

[fol. 637] A. That is right.

Q. All right, then what do they do with that price?

A. They enter it in their price book.

Q. Sir?

A. They enter it in their price book.

Q. What authority do they have to vary from that price, if they do?

A. The only thing is to reduce a given price to be competitive.

Q. To be competitive,—now what, exactly, do you mean by that?

A. Well, for example, if they receive a price of $1.00, for example, on an item, and competition is selling it for 98¢, they have permission to sell it for 98¢.

Q. They have that permission?

A. That is right.

Q. And is that a part of the permanent policy of Safeway Stores?

A. That is right.

Q. And that is all the discretion they have?

A. That is correct.

Q. All right,—lets suppose that at Enid, Oklahoma, Safeway had a price of $1.00 on sugar, a price sent to the store manager by you, at Enid, and that the store manager found that a competitor, such as Blakemore, was on that [fol. 638] day selling it for 95¢; as I understand you, he had authority to reduce the price equal to that competitor, is that right?

A. That is correct.

Q. All right,—when do you learn about the change in that effective price in Enid?

A. The following Monday.

Q. How does he report to you?

A. He reports it on what we call a Form PC2, competitive prices.

Q. And explain that to us, just briefly?

A. Well, it is a form with columns on it; they list the items that they are being under-sold on, the competitor's price, and the competitor's name, the date, and forward it to the office on Saturday night, which we receive on Monday morning.

Q. And must he report any change that he makes in your prices in that manner?

A. That is correct.

Q. And you never know of that until two or three days after it is done, because it arrives by mail, is that right?

A. That is correct.

Q. So you don't know whether at Norman, or Tulsa, or at Enid, or Shawnee, what price they are charging on any given item right now, do you?

A. I couldn't swear to it, no.

[fol. 639] Q. And you won't know until that PC2 is returned to you?

A. That is right.

Q. And when that PC2 is returned to you, it will have the supporting data as to whose price they were meeting,—right?

A. That is correct.

Q. Is the same thing true of Mr. Christensen, and Mr. Templeman, and everybody else in the organization above the store manager?

A. Well I don't quite follow you there,—do you mean as to when they would know about the price?

Q. Yes?

A. We pass the information on, after we receive it in the office on Monday, we pass the information on, through channels, to the District Manager concerned in that district.

Q. Well why is it that nobody except the store manager, is that because nobody except the store manager has any prior knowledge of that cut price, is that correct?

A. That is right.

Q. All right,—now some of these prices which they referred to, Mr. McCloud, appear rather startling, and vary as much as five, six or seven cents on a staple article, like sugar; can you tell us, please sir, quickly? Did your store manager, or did one of your competitors take as much as [fol. 640] a five cent drop on sugar on one day, or how are those prices established?

A. Well, it is not likely that they would. It is usually a process of maybe a penny or two over a period of several weeks time. It might start out at 99¢, and somebody pick it up and put 98¢, and it winds up and you get down to your 95¢. It is not likely to drop in price so fast unless drastic changes in market occur rapidly on sugar.

Q. It is a slow process of jumping up and down, is that correct?

A. That is correct.

Q. What would happen if a merchant didn't follow it down?

A. Well he wouldn't have any customers.

By Mr. Swinford:

That is all.

Cross examination.

By Mr. Watts:

Question: Were you instructed by your superior, Mr. Templeman, to meet any price that was below the price of Safeway?

By the Witness:

Answer: Well, I don't think I was specifically instructed by Mr. Templeman, but that is our policy.

[fol. 641] Q. And what was your source of information as to who was charging the lower prices?

A. Now you are talking about over the State, or any particular town?

Q. Well, in your job; in other words, who told you that somebody was cutting down, so you cut your prices?

A. Well, we would have the information from ads in the newspapers here in Oklahoma City, and we make price checks constantly, of competition.

Q. Well do you do that yourself, or does someone report it to you?

A. Well as far as the price checks, I have two girls that do that work.

Q. Now suppose one merchant out of twenty cuts the price; do you meet that price?

A. Sure,—where are you talking about?

Q. I am talking about here in Oklahoma City?

A. Yes, sir.

Q. And the same rule applies when a merchant out some place else cuts a price,—now Mr. Witness, directing your attention to Exhibit "L", will you tell us what it is, please sir?

A. That is a Safeway ad, run Friday, September the 17th, 1954.

Q. Do you notice three items there, circled in red?

[fol. 642] A. I do.

Q. Are those items below price,—or below cost, the statutory cost as defined in the Unfair Sales Act?

A. Well I couldn't be positive, this is sometime back, but I would say they probably are.

Q. How much is Crisco?

A. Crisco is listed here at 92¢.

Q. Would you turn down, right below the Crisco ad, in the middle of the page,—see if there is any other kind of shortening advertised there?

A. Royal Satin, three pounds 89¢.

Q. Sir?

A. Royal Satin, three pounds 89¢.

Q. Royal Satin, is that a shortening?

A. Yes, it is.

Q. How does Royal Satin look, as compared to Crisco?

A. I don't know what you mean,—do you mean is it comparable to Crisco?

Q. Yes?

A. Yes, sir, it is.

Q. Now what does it say right above that ad,—89¢?

A. It says, "Free, one pound can of Royal Satin shortening, free of extra charge, with the purchase of 3-pound can of Royal Satin".

Q. Now that is given away without any additional charge [fol. 643] at all?

A. That is right.

Q. And thereby reduces the price of the 3-pound can?

A. That is right.

Q. Now I direct your attention here to Exhibit "M", what is that next exhibit?

A. Well this says Friday, September the 17th.

Q. What paper is that?

A. The Enid paper, The Enid Eagle News.

Q. Will you turn to an ad of Royal Satin in that paper, on the same date, and tell us what that was advertised for in Enid?

* * * * * * *

A. Well they have got Bake-Rite, or Gloss Satin shortening, three pounds for 69¢.

Q. Do they also give away a free can with that?

A. It doesn't say so.

[fol. 644] Q. The price then is different between the two localities, Oklahoma City and Enid?

A. Why sure, competition is not the same in every town.

Q. The Enid people did not get the free can?

A. No, they did not.

Q. Could you tell us what merchant you were competing with in Oklahoma City, that was giving away a free can of comparable shortening?

A. No, no other merchant handles Royal Satin shortening in Oklahoma City.

Q. Sir?

A. No other merchant handles Royal Satin shortening in Oklahoma City.

Q. Now directing your attention, Mr. Witness, to Exhibit "C", "C-7" is it?

A. Yes, sir, "C-7".

Q. Do you see an item, Parade, there?

A. Yes, sir.

Q. What kind of merchandise is that?

A. It is a detergent.

Q. Is it a soap?

A. No, it is a detergent.

Q. It is something similar to soap, it cleans?

A. That is right.

Q. Were you giving away anything with that?

[fol. 645] A. Buy one and get one.

Q. Two packages for 31¢?

A. You buy one and they give you one free, yes, sir.

Q. Now who else were you competing with that was giving away one free?

A. No one else sells Parade.

Q. That was your own idea?

A. Yes, sir.

Q. What was the cost on that?

A. I think Mr. Crowe has it,—fourteen and a fraction cents,—I don't know off-hand.

Q. And what other detergent is that comparable to?

A. Oh, Tide, or Does,—Oxydol.

Q. What is the posted price then for Tide?

A. 31¢.

Q. So on this type, you gave way a free can for 31¢?

A. That is right.

Q. What was the cost of Tide?

A. I don't recall,—I couldn't tell you.

Q. Well, comparing it to 31¢, what would you say it was?

A. It would have to cost about twenty-eight and a fraction cents.

Q. But your cost of the comparable detergents, you say, were 14¢?

[fol. 646] A. That is right.

Q. That was a detergent that was put out by Safeway Company, wasn't it?

A. That is right.
Q. What do you call that, a house brand?
A. Well maybe you do,—we don't.
Q. What do you call it?
A. We call it a sponsored brand.
Q. What is the normal cost?

By Mr. Crowe:

Of what?

Q. Of Parade; you don't have that as a regular merchandise item,—this is a booster,—what is the normal cost?
A. About the same as Tide.
Q. About 27¢ or 28¢?
A. That is right.

By Mr. Beshar:

Question: Now then, short of this merchandise deal, this would be an example cost, is that correct?

A. Yes.

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[fol. 647] Redirect examination.

By Mr. Swinford:

Question: Now as I understand it, both of those items that you referred to were run by the manufacturers, and not by Safeway?

By the Witness:

Answer: That is right.

By Mr. Swinford:

That is all.

Recross examination.

By Mr. Watts:

Question: The manufacturer was Safeway, wasn't it?

By the Witness:

Answer: It is one of Safeway's subsidiaries.

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[fol. 648] By the Court:

The defendant may call its next witness.

* * * * * * *

Direct examination.

By Mr. Swinford:

Question: State your name, please?

By the Witness:

Answer: Richard B. Johnston.

Q. By whom are you employed, Doctor Johnston?
A. Southern Methodist University.
Q. In what capacity?
A. Chairman of the Board of Economics.
Q. Are you an Economist?
A. I am, sir.
Q. Tell us what your scholastic training has been?
A. University of Texas, P. H. D., P. A., and M. A. Further graduate work beyond the P. H. D., at Leland-Stanford University and the University of Virginia.
[fol. 649] Q. What has your practical experience been in that field?
A. I was assistant to the competroller of the American National Insurance Company, joined the staff of the University of Arkansas in 1938, at first as an instructor, and then assistant professor of economics and business administration, joined the U. S. Department of Commerce as regional business consultant, the Southern Division, became the analyst, and subsequently Senior Economist of the Federal Reserve Bank of Dallas,—was for a period during the war Military Government Officer, assigned to the Navy and assigned to the Tokyo Headquarters, as financial adviser to the economic scientific section of General McArthur's staff. Returned from the war and—

By Mr. Watts:

Oh, we will admit his qualifications.

* * * * * * *

[fol. 650] Q. What is your practical experience then, Doctor, in that field?

A. When I left the Federal Reserve Bank of Dallas to join the Southern Methodist University staff I also became a consultant to a number of organizations. I am presently consultant to an advertising company in Dallas, in that capacity; I have served as adviser to Federated Department Stores, Wago's Grocery Wholesale House, or Grocery Association, Zales Jewelry, and independently, as a private consultant, I have served as a consultant to the Merchantile National Bank of Dallas, and the Republic National Bank of Dallas,—to Schourncourt Corporation, a manufacturer and wholesaler; to Braniff's National Airways, and to other organizations. I am Managing Director of Martha Washington's Candies, and part owner and Vice-President of the Investment Company, an investment service organization of Dallas and the southwest.

Q. Thank you, Doctor. Have you made any investigation of trading stamps and their use in the retail level?

A. I have, sir.

Q. And will you describe your research, briefly, on the question to us?

[fol. 651] A. Last year, while I was on a Ford Foundation Grant away from the University, an investors' group asked me to investigate trading stamps and other coupon devices used in grocery stores, with the anticipation of perhaps becoming an investor in that area. Shortly thereafter, and purely as a matter of acting gratutiously, I was approached by a representative of yourself and asked to conduct the study of the stamp situation and the function of stamps in the merchantile field.

Q. And where was that study made, Doctor?

A. The study for the investors' group was done primarily in Buffalo, New York, but subsidiary analysis elsewhere. The study field was partly an investigation of the literature, a rather curisory examination of the Oklahoma market and capital valuation of the stamps as I could observe them in Texas,—Dallas.

Q. Doctor, does the word "price" have a definite meaning to an economist?

A. It does, sir.

Q. Explain it, please?

A. Price is a consideration which the purchaser gives and the seller receives in transfer of a given service.

Q. Give, sir, your opinion,—or is there, in your opinion, any area,—or any form of sale wherein the amount which the purchaser gives and the seller receives would differ?

[fol. 652] A. By definition, that could not be so, sir.

Q. It must be one and the same?

A. That is right, sir.

Q. Does the term "tied-sale" have a defninte meaning to it?

A. I will say it does, sir.

Q. Tell us what it is, sir?

A. Where two or more articles, or articles and services are transferred together, that is a part of the single transaction.

Q. What is the price of a can of tomatoes and a stick of chewing gum sold together for a price of fifty cents?

A. Fifty cents, less the value of either, determines the price of the other.

Q. That is to say, the price of the two is fifty cents, is that right?

A. That is right, sir.

Q. And if an economist is asked to divide the sale, and determine the price of either the tomatoes or the stick of chewing gum, how do you approach the problem, and what is the mechanics in finding out what is the price of either of those articles?

A. Well, if we can find the market in which the commodity is being sold, and the equivalent of the comparable market, we could determine the price of one, or both. If you could [fol. 653] determine the price of one, you would substract it from the total price to determine the price of the other.

Q. Based on the illustration, just generally looking on a stick of chewing gum as representing a value of a penny, what is the value of the can of tomatoes that was sold with the chewing gum at a total price of fifty cents?

A. Forty-nine cents.

Q. Does that situation, as illustrated by you, ever differ or ever change, from an economic standpoint?

A. I can't conceive of it changing, sir.

Q. Doctor, are you familiar with the term "discount", as it is used in monotary circles, or financial transactions?

A. Yes, I am.

Q. Will you just describe it, please?

A. Well a discount is a reduction from a list price, or an invoice price. It appears in several forms. There are quantitive discounts, in which the purchaser is ostinsively given a reduction in the price from the invoice, or list, because he is the purchaser of large quantities, or commits himself to be a large purchaser; or trade discount which gives discounts according to the fixed price to merchantile establishments, and so-called cash discounts which give a reduction in the price from invoice, or list, if the purchaser makes remittance within the specified period of time.

[fol. 654] Q. Now you have described the commoner forms of discount, have you, in a merchantile business?

A. There may be others, but those are the primary forms.

Q. Do all of those discounts, regardless of the name which is given them, or as you described, reduce the stated price of the article?

A. Yes. In fact the price, as I have defined it, is a discounted price, no matter whether it is trade, quantity, of discount for cash. The actual price, from the point of view of the economist, or the market analyist, is the consideration which is transferred, and that is the reduced price.

Q. Doctor Johnston, there has been some argument that trading stamps,—and I refer specifically at this point to S & H Green Trading Stamps,—are you familiar with the particular stamp that I refer to?

A. I am, sir.

Q. Have you been present most of the time during the trial of this case?

A. I have.

Q. And heard the testimony of the witnesses as to the operation, and the cost, and so forth?

A. I have.

Q. Are you familiar with the contract, or the licensing [fol. 655] agreement of the Sperry-Hutchinson Company?

A. I have read it.

Q. Do you agree, generally, with the testimony of the witnesses as to the manner in which these stamps operate?

A. I find no significant differences with the testimony.

Q. Based upon your experience, both academic, and your investigation which you have made, do you believe that trading stamps,—that the trading stamp, and more specifically the S & H Trading Stamp, is a form of cash discount?

A. No, sir, I do not.

Q. Tell us why?

A. Well, one thing, it appears at the retail level,—not at other levels,—and the cash discount traditionally reverts back,—the practice is almost exclusively confined to the manufacturer or wholesale level. Second reason, the cash discount presumes that a purchaser has alternatives,—can make a free choice between paying cash or accepting credit for a term. As I understand it, the stamp is typically offered in retail organizations where only cash sales are made, or that an alternative does not exist. For further, or supplementary comment in that regard, the stamp is offered in addition to the purchase for cash and the purchase for credit, without any significant distinction between the two, in the same establishment or in different estab- [fol. 656] lishments owned by the same organization. In addition, the trading stamp represents evidence of something tangible in value, which is bought by the merchant, held by him as an inventory of valuable item passed on to the consumer. When a so-called cash discount is extended at the wholesale-manufacturer level, nothing is bought in advance by the wholesaler or manufacturer,—the price is simply reduced, and nothing in itself is inventoried.

I think I could think of other distinctions, but I believe those are pretty substantial distinctions as to price.

Q. You mentioned the fact in the first instance, I believe Doctor, that the price discount did not appear at the retail level, whereas, the typical cash discount is at the wholesale and manufacturer level, is that correct?

A. That is right, sir.

Q. In your research, have you found any treatment of this so-called cash discount at the retail level, any reference to it, or authoritative work upon it?

A. How exhaustitive you would call my search, I don't know, sir, but what I consider a very adequate check of the Southern Methodist University library, and the library of the City of Dallas, I found no significant reference work for the matter at all, no.

Q. It is always discussed in reference with the wholesale-[fol. 657] manufacturer level?

A. The wholesale, or manufacturers' level.

Q. And that, of course, is well understood by you as an economist, and you are generally familiar with the system at that level?

A. I am, sir.

Q. You have no knowledge of cash discounts at the retail level?

A. I have never encountered an instance which I considered significant; I don't know of any general practice of cash discount at the retail level, I will say.

Q. I see; you then mentioned the fact that you thought there was a distinction between trading stamps and the cash discount as known at the wholesale level, in that the trading stamp does not afford to the purchaser a freedom of choice; will you tell us what the freedom of choice is, in the true discount,—the true cash discount system?

A. Well, he can either take credit terms or pay cash, and take the advantage of the lower price in the cash discount; and the trading stamp, he goes in, has opportunity only to pay cash, if it is a cash store, and pick up the trading stamp, or if it is a cash or credit store, he can take either, and pick up the trading stamp.

Q. Doctor, you have used the word "cash", describing the cash discount for the wholesale level; is that literally [fol. 658] correct?

A. A cash discount?

Q. Yes?

A. I don't think so, sir,—I would call it,—I think the terminology is a matter of,—oh, traditional custom,—is a term that is better used, and perpetuated in technical words, but it is not properly descriptive.

Q. My question is, at the wholesale level is there ever a cash transaction?

A. No, sir, there is not; you receive an invoice and pay it within ten days and take off two per cent, we will say.

Q. Or the alternative to that is what?

A. If you allow it to run beyond the ten days, within the next twenty, that is a total of thirty days,—most of their requirements are usually thirty days,—you remit the total invoice, but no secondary transfer of value occurs.

Q. So the discount system at the wholesale level is historically,—the concept actually involves two terms of credit,—one which is shorter than the other, is that right?

A. Yes, sir, because even on the two per cent basis you have ten days before you make any remittance, and credit is extended for that period,—the credit risk exists for that period; you have the account records to set up for that period, and so on.

[fol. 659] Q. And by contract, you do have that alternative; you take a shorter term or a longer term in which to pay the account,—right?

A. That is right.

Q. That is essential to a true cash discount?

A. Yes, sir.

Q. Now in the case of the stamps, you do not find that alternative there, is that correct?

A. I have not found an example of that alternative; as I said, it is either cash or the credit alternative.

Q. Now Doctor Johnston, let me ask you this question; suppose that a retail grocery merchant sold for both cash and credit. His credit terms were these,—incidentally, credit terms don't vary from one customer with the other, so far as he is personally concerned,—if you want to do a credit business with him you must pay your bill on or before the 10th of the month succeeding the date of purchase, for which you pay an additional charge of two per cent, sometimes referred to as a "service charge". He does both a credit and a cash business, and say he does sixty per cent cash, and forty per cent credit business, and he gives stamps to his cash customers who pay over the counter, and also to his credit customers who pay on or before the 10th of the following month; do you find in that hypothesis any alternative, or any resemblance to the cash discount system?

[fol. 660] A. Well now let me see if I understand you; this grocer charges two per cent if he extends credit?

Q. Right.

A. All right, and he gives stamps to cash customers, and he gives stamps to the credit customer, if the customer pays within the term of that credit contract for which he pays two per cent?

Q. That is right.

A. Well I don't see any alternative existing there, other than the alternative of paying another two per cent and taking advantage of the forty days credit.

* * * * * * *

Q. Doctor, the differintiation I believe you made in connection with the trading stamp and the cash discount at [fol. 661] the wholesale level, was in connection with the,—I suppose the flexible character the stamp itself has as opposed to the cash discount which is a credit?

A. Do you mean that I find it is something of tangivle value which is transferred?

Q. Yes,—will you explain that to us, please sir?

A. Well, as I understand the stamp, it is valuable to the store in that it buys it from the stamp company; it is valuable to the customer in that he can obtain a very wide selection of goods by filling a book with them, but it,—I have heard it testified at $3.00 a book,—and I have verified that that seems to be an approximate valuation of the book. It appears to me that it is just as valuable as a,—well, a U. S. postage stamp,—maybe more valuable in terms of the general changeability of it, that is, in a sense, a purchase script, with consumer value, or you might even say it is a small warehouse receipt, giving title to a person of goods held in the warehouse by someone,—and I can't see how you can construe it as anything other than something of tangible value which should properly be considered an asset and something transferred to the customer.

Q. Referring again to the "tied-sale", Dr. Johnston,—if a purchaser goes into Speed's store and buys a dollars' worth of merchandise,—well, we will call this tomatoes, [fol. 662] too,—and he receives therewith ten S & H Green Stamps, trading stamps, but he pays a dollar therefor,—what is the price of that transaction?

A. Well, I will have to put an assumed value on the stamps,—something between two and a half and three cents,—whatever the value of the stamps may be, and—

Q. Well I asked you, Doctor, what is the price of the transaction itself?

A. Oh, the total transaction is one dollar.

Q. Yes, sir; all right, now, so for one dollar he purchases not one thing, but two,—is that right?

A. That is right.

Q. Now, how do you ascertain what he paid for the tomatoes?

A. In that situation, I think you would find it simplest to ascertain the value of the trading stamps, and that I would do.

Q. Assume, if you will, that a trading stamp is in face worth three per cent, or three cents on the dollar,—that is just for illustration?

A. Well, if the value of the stamps was three cents, then the price of the tomatores was ninety-seven cents,—ninety-seven cents for the can of tomatoes.

Q. And if you count the total price of the whole transaction, it is what?

[fol. 663] A. One dollar, yes, sir.

* * * * * * *

Q. Doctor Johnston, have you, in your studies and work, made some examination of the law of monopoly,—now when I say "law of monopoly", I mean not the Statutes,—but you have made a study of monopolys in your training in economy, is that correct, sir?

A. That is right.

Q. Could you tell us, please sir, whether it is possible to establish a monopoly by merely lowering one one price to meet the equally low price,—or the equally low value, or high value, I should say,—of one's competitor in the merchandising field?

A. No, sir, a reduction in price to meet a price reduction is generally taken as indicative of existance of a competitive environment; do I make myself clear?

Q. I am not sure that you do; is it a monopoly?

A. It is not evidence of a monopoly to reduce a price to meet a price reduction, no, sir.

[fol. 664] Q. What does it do?

A. It preserves a competitive equaliberium, to use an economist's term,—equality to competitors in the market.

Q. Assume, Doctor Johnston, that you have a locality where there are a number of cash and carry merchants,—or shall we say, large grocery stores, who are generally competitive one with the other, and for some time they have been selling the same articles at approximately the same prices, and have been featuring those articles in their most important advertisements at those prices; assume further that a part of those merchants in that locality maintain their same price structure, dollar-wise, and adopt the use of trading stamps,—we will just assume that, of course, for the purpose of this question, which are worth three cents on the dollar. What is the competitive position of those merchants who do not distribute stamps with the sale of that merchandise?

A. Well selling the regular groceries, or commodities, at a higher price than their competitors who have adopted the trading stamps.

Q. That is, by virtue of the "tied-sale", which you previously explained?

A. Yes, sir.

Q. Are they in an inferior competitive position from [fol. 665] the standpoint of market?

A. I think so.

Q. And if those merchants who have not elected to use green stamps reduce their prices to the exact equivalent of the value of the trading stamps, will that tend to create a monopoly or divert trade in any way?

A. No.

Q. What will it do?

A. It will equalize the competitive position, or restore it to its former position.

Q. Now the converse of that, please; if those merchants who do not elect to adopt trading stamps are forced, as a matter of law, to continue to charge the original price, which we will assume renained constant, and the stamp merchants are permitted to give stamps, what is the economic effect upon those merchants who give stamps?

A. Well it gives them the advantage, so long as they can preserve their access to a stamp and the others cannot duplicate that stamp.

Q. And if that differintial is artificially maintained by

law long enough, will that, or will it not, tend to create a monopoly?

A. Well so many other factors must be considered in the development of a monopoly,—whether it can be sustained over a long period,—I would hesitate to answer that conclusively; it would certainly have a tendency to favor a [fol. 666] monopoly situation.

Q. Would it tend to divert trade in their direction?

A. It would, sir.

Q. Doctor Johnston, are you familiar with the term, "cost of doing business"?

A. Yes, I think I am.

Q. Will you define it for us, please sir?

A. As known to an economist, it is all of the expenses undertaken by a business organization in conducting its operations, other than the cost of the merchandise which it transfers to its customers. Now this is pretty broad, but I think—

Q. Well could you give us an example of the items which properly fall in that category?

A. Wages, and salaries,—administrative overhead,—utilities,—rents,—interest,—advertising,—insurance,—oh, I think that is sufficient to comprehend it.

Q. If some merchant had all of those expenses which you have described as typically in falling within this catergory of the "cost of doing business", and in addition thereto became a licensee of the S & H Stamp company, and purchased stamps from them, can you tell us whether or not the cost, the out-of-pocket expense, we will say, of those stamps would properly fall within the category of "cost of doing business"?

[fol. 667] A. I don't believe so; if he has acquired a thing of tangible value which he holds as an asset, and transfers it to his customers, just as he acquires,—to use your example,—the cans of tomatoes, and holds it in an inventory and transfers it to his customers, it seems to me that that is a comparable cost of merchandise, and it should not be included in the cost of doing business.

Q. Do any of what you referred to as the typical items of cost of doing business, are any of those transferred to the customer, in a tangible form?

A. No, sir, he,—the customer, can't take any of them home with him. He can't take any of the air conditioning, any of the parking space, any of the rent space in the building, any of the light that was shed on him while he was shopping,—none of those things go home with the customer.

Q. But he does take the trading stamps home?

A. Yes, it wouldn't be of any value to him if he couldn't.

Q. We are assuming, for the purpose of these questions, that they not only have a redeamable value, but that they have a cash value of, say three per cent. Now Doctor Johnston, it has been argued that the trading stamp might be assimulated to advertising, in some of its forms; do you have an opinion as to whether or not there is any simi- [fol. 668] larity between trading stamps and advertising, as is known to the economist?

A. I have my own opinion; do you want me to give it to you?

Q. Please?

A. I think advertising is properly defined as that which gives information to a potential customer about the existence of a commodity, its availability, its quality, its price, or a name or a service, which you wish to induce him to buy. I find that the trading stamp imparts no information, —in fact it must be advertised,—information about its availability, and its value, and where it can be found, must be given.

Q. Are you familiar, in a general way, with the use of trading stamps, as they have been used in recent years by grocery retailers?

A. Yes, sir, I am.

Q. Do you have an opinion as to whether or not they are, or are not, beneficial to the purchasing public when used in that manner?

A. I determined, before any relations with you, that trading stamps were not a benefit to grocers, and advised the investors' group accordingly. Stamps, I think, may temporarily permit some grocers to attract volume from their competitors, but I do not believe it will permit grocers [fol. 669] in general to stimulate the sale of groceries, for the volume of grocery sales seems to be, and I think very

definitely is, the product of the population and its income level, and it fluctuates only very slightly, except with relation to the total income of the population of the community. Thus a group of grocers who undertake stamps, in the hope that it will stimulate their sales, once all have resorted to it, or a comparable practice, simply find that they have undertaken a supplementary cost involved in the printing of stamps, and the keeping of the records in the handling of the stamps, and the paying of the cost of the supervisory organization connected with the stamp company, instead of gaining any real, significant or permanent advantage.

Q. Do you know, Doctor, whether or not the profit in the retail grocery trade is sufficient to sustain the cost of the stamps?

A. I can't quote from memory,—I can't quote from memory,—but I actually have some data from the U. S. Department of Commerce in my satchel, if you would like for me to give it to you.

Q. Will you bring it up, please?

A. (Witness gets brief case) This is the Business Service Bulletin of the Small Business Administration of the United States Department of Commerce. It is a publication [fol. 670] as of December of 1954, covering operating ratios for '52 and '53 in Super-Markets,—grocery stores. It is the latest available of its type, since the next one will not be available until December of 1955. Quoting,—'53 and '54, it indicates that the average net profits, before taxes, of Super-Markets was 2.35 per cent of sales in 1953, 2.46 per cent of sales in 1952, or less than three per cent, you see, by a considerable margin. The range was on organizations with as little as one market, 2.89, to organizations with two to three markets, 2.12,—at no point higher than 2.89 in the range of classification offered here.

Q. Could an industry, Doctor Johnston, whose average profit is below three per cent afford the additional cost of stamps, which are, for all purposes, has been estimated as being between 2.0 per cent and 2.8 per cent?

A. Not unless it could increase its mark-up on its commodities in general sufficiently to cover those stamp costs; it could not absorb these costs without price increases of the prices for which the commodities are sold. To put it

another way, if it could pass the cost of the stamps on to the customer and thus take part of the customer's dollar away from him for the purpose of stamps, and away from other organizations, such as department stores and the like, then it could survive, but only if it could.

[fol. 671] Q. Only if it could,—that brings the question as to whether or not the stamps, in your opinion, if you have one, are of economic value to the customer who obtains them?

A. Well, there are two ways to respond to that; they are certainly of economic value to a customer that wants them, and apparently customers do. But if you ask me to appraise them as a matter of general economic efficiency, I say no, they are not generally economiccaly efficient.

Q. I would like to limit my questions, if I may, to the retail grocery trade; do you have an opinion as to whether or not they either add or detract from the efficiency of the distribution of food products, and whether they increase or decrease the cost of food products to the consumer?

A. In all instances where I have talked to grocers, and talked with others who deal with grocers, I have found that they agreed that the adoption of the stamp program increases the grocers' cost, and consequently increases the cost of groceries to the consumer,—ultimately.

Q. Is that increased cost of groceries to the consumer, Doctor Johnston, in direct proportion to the benefits which the customer receives in premiums?

A. Well, let me put it this way, sir; I think this would take very careful statistics to evaluate, to be sure, but I [fol. 672] think that over a period of time the grocer would have to increase the cost of his groceries by an amount, which would mean that the customer would have to pay more for the premiums that he got than if he went to a department store, or specialty store, and bought them direct.

Q. You feel then that it is an inefficient manner of distributing groceries and commodities?

A. I would like to make a very careful distinction, as an economist, that even though it is a very high cost of a way of doing business, if the customers prefer it, then it is economically a valuable undertaking, because we have

got to please the customer, but as an economist, I say that it is an inefficient economic process.

Q. There is no question in your mind but what it does increase the cost of food products?

Q. Yes, sir, that is right; there is no question in my mind about that.

Q. Doctor Johnston, have you made some study of the natural position,—economic position, of Safeway Stores,—are you generally familiar with their existence in places, in the market?

A. I have made a limited study of it.

Q. Do you know what their national percentage of food products sales is?

A. Yes, sir.

[fol. 673] Q. What is that?

A. In 1954 the U. S. Department of Commerce estimated that the total sales in the United States was somewhat over seventy billion dollars, while Safeway, in the United States had sales of about one billion eight hundred million, which indicates that it was something between three and four per cent of the total grocery sales in the United States, affected by Safeway.

Q. Do you know what their margin of profit is, dollar-wise, per store?

A. I have it computed here.

Q. Give it to us, please?

A. The average net income per store, per day, $22.58,—if they drop a crate of eggs I guess they lose their profit there. The average net income per store, per year, $6,999.00,—that is less than $600.00 a month. The per cent of net income to sales, less than one per cent, .77 per cent. This is on the total operation as compared with the average for 1953, and Super-Markets, as you will recall, of 2.4 per cent, 2.2, or 2.82, or some such a figure as that,—I don't recall it exactly, but I have it here, if you wish it.

Q. Do you have the information as to the growth, or lack of growth of Safeway over the past year?

A. Not this past eleven or twelve months, but I have [fol. 674] their annual report for '54, which indicated an increase of 3.52 per cent in sales from '53 to '54, whereas, the national increase in food sales was four per cent, ac-

cording to the Department of Commerce. I have some information from their annual report, on store numbers. They opened sixteen stores during '53, 44 during '54, but they closed 71 stores during '53 and closed 83 stores during '54, according to this annual statement.

Q. Their increase in business was not as high as the average increase the nation over?

A. No, not for all food sales.

Q. They closed more stores than they opened, is that correct?

A. That is correct, sir.

* * * * * * *

[fol. 675] Cross examination.

By Mr. Lane:

Question: Doctor Johnston, I am puzzled by your figures now, on Safeway's sales during last year, and Safeway's comparrison with other stores; is it your contention that that has some bearing upon the trading stamp issue now before this Court:

By the Witness:

Answer: I was responding to a question from counsel, and was making no contention myself, sir.

Q. Well as an expert, can you see any bearing whatever upon the issue in this litigation?

* * * * * * *

A. Well sir, if I may make my interpretation to Mr. Swinford's reason for the question,—

Q. I am not asking Mr. Swinford's reasoning, Doctor, —I am asking you whether you preceive any bearing there?

A. Yes, sir, I do; may I state why?

Q. Yes,—please?

[fol. 676] A. All right, sir, it seems to me that the case that I have heard, has attempted to show the monolopy intent by a monolopist who was involved in the actions of Safeway in Oklahoma. Now I think that logically introduces the question of whether Safeway occupied the posi-

tion which it can perform as a monolopist, or is it a monolopist, or logically, does it seek to become one? Now the question that Mr. Swinford asked me, elicited a response, or suggested anyway, that Safeway is not a strong monolopistic situation nationally, and that would, it seems to me, have bearing upon the case.

Q. You come from Texas, don't you, Doctor?

A. I do, sir.

Q. Do you know that Safeway has been indicted in Texas for exciting a monolopy?

By Mr. Swinford:

We object to that, your Honor; that has been gone over and over again, and your Honor has sustained objections to it, and they bring it up for prejudicial purposes only.

By the Court:

Objection sustained.

By Mr. Lane:

Your Honor; I suggest that it only came into this case before from the evidence elicited from this witness on [fol. 677] direct examination tending to prove a monolopy; and that was, I understand, the only reason he can conceive for it.

By the Court:

The objection was sustained as to being incompetent, irrelevant and immaterial, as to the indictment in Texas.

Q. One thing, Doctor Johnston, however, that those figures do seem to prove is, that Safeway is not, at least in a prima facie way,—Safeway is not managed with the same profitable results as all the Super Markets?

A. They seem to indicate that, sir.

Q. That comparrison would be that Safeway's net income was only .77 per cent, as against the national average of 2.42 per cent, or about that?

A. Would you like to see these, sir (indicating instruments which witness has,)—that is right.

Q. Did you make any study of how Safeway has fared since July 21, 1954, on a comparative basis, in Oklahoma City and Midwest City?

A. I did not, sir.

Q. You don't, I take it, contend that Safeway is more peculiarily exposed to competition with grocers who issue trading stamps than, for example, A & P, or Krauger, or [fol. 678] some other grocery chains?

A. I don't think there is anything germane in the Safeway situation that would make them more vulnerable to A & P in their program, no, sir.

Q. You suggested that if the housewife who collects trading stamps were to save her money and buy the reduction merchandise from the department stores she would pay less than she pays getting that merchandise through redeeming it with trading stamps?

A. I think over time, that would tend to be true, yes, sir.

Q. Well now you think so,—but have you made any study of that?

A. I have not, and I said a very careful stastical analysis would have to be made before I could be sure, but I gave my opinion, and I think it is valid.

Q. Well, you say you think it is valid,—did you take into consideration that the Sperry and Hutchinson Company does business nationally,—in forty-seven states,—we are talking about the distribution of redemption merchandise by Sperry and Hutchinson.

A. I know it is a very large concern, and they handle a huge quantity of merchandise. I know that gives them buying advantages which permits them to buy very cheaply, —drive a very hard bargain at sources of supply.

[fol. 679] Q. On that basis, would it not be your assumption that the Sperry and Hutchinson Company would be able to provide redemption merchandise at a lower cost than would the smaller retailers?

A. No, sir, I am talking about total consumer,—all of the consumers in the market, and I know this,—I think I can reasonably state that I know it,—that the loss, the shrinkage in stamps, the loss that the customer endures in stamps, which are never submitted for redemption, and which are entered in the books and lost, represent a very

considerable amount, so that even though you buy cheap, and offer your merchandise at a pretty reasonable price, the average consumer's take-home is much smaller than it would be if they kept their money and went to the store with it, because she tends to lose money because of the dresser-drawer faculty, but there are other reasons, also.

Q. Well now before you leave that one, did you ever make a study of what percentage the Sperry and Hutchinson trading stamps, with which we are dealing here, what percentage of those stamps are lost and not redeemed?

A. I tried very hard to find out, sir; it is not a matter that one can get from you. Would you testify to the amount?

Q. Yes, sir; I would put it at 98.5 per cent; would that startle you?

[fol. 680] A. As being redeemed; it would certainly supprise me.

Q. Would it also be your theory, if you found that it was 98.5 per cent,—would it alter your theory?

A. It would alter my theory, and I certainly would like proof that it is that high.

Q. Well do you have proff that it isn't 98.5 per cent?

A. No, sir, I do not.

Q. Well is that part of your testimony based upon the assumption of something for which you cannot give us any evidence?

A. Yes, sir, that is true.

Q. Just your thought that they must get lost somewhere?

A. Well, I submitted it as a reasonable conjecture.

Q. When you made that conjecture, what was your conjecture as to the percentage of the stamps that were lost?

A. In discussing with the interested people involved in the group that wished to invest in a comparable function, they repeatedly stated to me that loss ratios must run as hight as ten or fifteen per cent,—shrinkage, as they call it. I did not accept that without some amendment, but I assumed that it must certainly run somewhere in the neighborhood of eight or ten per cent. They had some practical experience from their comparable operations.

Q. You were talking about them before; it is not clear

[fol. 681] at all in my mind just what kind of a group that was? Was that a group that consulted you with respect to the advisability of organizing a trading stamp company?

A. They asked me to assist them in preparing an analysis for submission to a group which would finance their operations.

Q. What kind of an operation,—I am trying to get at that?

A. It is comparable to the Laublaw operation in Buffalo, New York, with which I am sure you are familiar.

Q. And you concluded that a Laublaw type of operation would not be profitable?

A. No, sir,—I concluded that the Laublaw type of operation was a great deal superior to the S and H Green Stamp, and would be profitable if it could be profitably set up in the first place, with a sufficient magnitude, and sufficiently capitalized.

Q. You have suggested that, on the basis of your conjecture on the loss of stamps, that the housewife would do better not to take stamps?

A. I added that I had other reasons for thinking so; there is the cost of printing the stamps themselves. I was very much supprised when we investigated, carefully, the very hugh cost from the point of relationship to the total sales of the giving of stamps on individual purchases. [fol. 682] A very large cost is printing the stamps, particularly if you are going to establish adequate controls over them so that they can't be counterfeited. I also know, from discussion with those who are intimately involved with grocers, who use stamps or their equivalent, that there are safeguards and costly accounting records which must be established and kept in connection with them, which would not be needed if they did not undertake stamps. There is the selling cost of the stamp companies themselves, of entering the market or financing the salesmen. It is true that selling costs in a department store or specialty store exists too, and which is the greater, I do not have stastical proof of, but I was told,—

Q. Well let me dwell right on that one part while we have it well in mind, that one problem; you know, don't you, Doctor Johnston, that department stores buy from wholesalers,—they don't buy everything direct?

A. They buy some of their merchandise from wholesalers, sir, but increasingly they have their own direct access to supplies.

Q. Do you know that the Sperry and Hutchinson Company does not buy from wholesalers, but buy direct from such companies as General Electric, Westinghouse, and what not?

A. No, sir.

Q. Do you know that Sperry and Hutchinson has, located [fol. 683] all over the United States, its own warehouses and carries out its own distribution of redemption merchandise?

A. I do, sir.

Q. So that at least, in computing the cost of the merchandise which is delivered to the housewife in return for the stamps, the middle-man is cut out?

A. May I answer your question in this way, Mr. Lane,—

Q. Just answer me whether you know that is so?

A. I know that, sir; now, I think the proper way to resolve this discussion between us, is for you to give me the equivalent in stamp books of the list of merchandise available in your store on the third floor of Browns, and then let us check the market for exactly the same branded merchandise in Oklahoma City and take an average, over say, a period of thirty days, and find out where the customer could have bought cheaper. I went to the store yesterday noon, the first opportunity I had had; I found that your Samsonite oval table, retail list $17.95, cost six books,—that is just about $3.00 a book,—it seems to verify the testimony that I have heard,—but if I can't buy that Samsonite table for under $17.95, I would be very much supprised,—maybe I can't in Oklahoma City, but I surely can in Dallas, and I suspect I can in Oklahoma City. I found one of the electric razors, Shick, or Shave-Master,—maybe not, but I do remember the price,—it was $29.75,—eight [fol. 684] and three-quarters books, at about $3.00 a book. I know discount houses where that can be bought for maybe as low as $17.00 or $18.00. Tex Gettinger, in Dallas, offorded it on special for as low as $16.00. I don't think you are doing more than about meeting the sypical highest retail price, in equivalent in books.

Q. Why, isn't all you are saying in those illustrations that where they have discount houses which will violate the fair trade laws, you can get a cheaper price than if the customer uses trading stamps, which are about the best trade level?

A. No, sir, I am saying that if you operate more efficiently and have devices which permit you to buy cheaper and operate cheaper than your competitive department store, or specialty stores, and the like, that you are not passing it on to the customer, and that is the germane question in this discussion.

Q. All of that is based upon your conjecture that certain things in the Sperry-Hutchinson catalogue can be bought from discount houses, and in some places in Texas, for a cheaper price?

A. No, sir, I said, sir, that the way to resolve the issue was to make a study; I think that is always the way to resolve an issue.

Q. And you have not made such a study?

[fol. 685] A. No, nor apparently have you, sir.

Q. In preparation for your testimony, and for the statement which you made, that it is not efficient for the housewife to save stamps, you did not first make such a study?

A. Well sir, that is not completely true. Prior to being requested by Mr. Swinford to evaluate the stamp situation in regard to this particular case, we went to considerable expense,—a great deal of time,—in connection with our investor analysis on finding out what we could buy goods for and offer them for in an authentative coupon deal, and comparing what S and H was doing in its coupons, because we intended, frankly, if we entered the business, being strong competition with you, and, we hoped to destroy you, or at least in the market where you are now, and make you secondary to ourselves. I didn't compile a list of your prices in all markets, no, but I did go far enough to reach a conclusion that you are not offering as good a premium opportunity as we could, nor as were being offered by stores typically in the area where I could make an investigation quickly.

Q. When was it you said you did that?

A. This was in February, and March, and April, of this year.

Q. When did Mr. Swinford get in touch with you?

[fol. 686] A. I am not quite sure, because when I was first approached I said I was too busy and could not consult with him until after June the first.

Q. At least, then, it was before June the first?

A. Yes, sir, it was before June the first, but after I had completed the other study.

Q. That was in February and March?

A. And April, as I recall it.

Q. And in April; so this must have been,—was this after you had completed that prior study?

A. The other study had been completed,—it was out of the way; I had no reason to go back and undertake further analysis in that regard.

Q. All right, then we have it; it was in May,—it must have been in May?

A. It must have been completed by May, sure.

Q. And yet, from February to October, wherever we are at today,—the 19th,—you have not made the analysis necessary to support the statement that you made that the housewife would do better not to take the stamps, is that right?

A. I said that she would get—

Q. I am not asking you that; I am asking you whether you made that analysis?

A. I made no further analysis, Mr. Lane; are you sug-

[fol. 687] gesting that the situation has changed, in a measure, since that time?

Q. Not at all, I am suggesting that you are not prepared to give the testimony that you have given on that particular subject, because you could have, and obviously should have, made a study which would have aided you in it, but you indicated that although you had ten months, you didn't do it.

A. But I take issue with you, sir; I did not have ten months, and I don't think a further check after June the first was required.

Q. You said, also, that stamps were not economically useful to the grocer; that, also, has been your statement.

A. Not quite, sir. I said that temporarily, they might achieve a diversion,—achieve a considerable competitive advantage. I said that over time I thought it might be, but

as other competitors resorted to stamps, or an equivalent practice, that the advantages would disappear. That is quite a different statement than you suggested I made.

Q. Let me suggest to you that where a grocery store is not utalizing its facilities to the full, anything which increases the use of those facilities would be of advantage to the grocer.

A. I agree.

[fol. 688] Q. If that increase in the use of his facilities flowed from the issuance of trading stamps, not just temporarily, but permanently, would it be a permanent benefit to him?

A. Will you please repeat the question, please sir?

Q. If an increase in the use of his facilities flowed from the issuance of trading stamps, and if that increase were permanent so long as he issued the trading stamps, would he then not have a permanent, rather than a temporary benefit?

A. You mean if he could increase the volume of his trade, let us say, and hold it?

Q. And hold it?

A. Well, and at the same time raise the price of the goods he was selling?

Q. I didn't include any raising of prices, no, at al.

A. Well, he might receive some advantage,—maybe considerable. We will have to talk about the volume of increase. I have some figures which I based on these reports of the U. S. Department of Commerce, if I may refer to them.

Q. No, no, I am speaking now about something theoretical, not something that has anything to do with anything about the Department of Commerce.

A. All right, if he could achieve a thirty per cent or [fol. 689] greater increase in sales, and sustain it, then he could absorb the cost of the trading stamps to him, but not much more than absorb it,—it would not increase his profit.

Q. If he could increase it thirty per cent he would absorb the cost without the necessity to increase his prices at all, is that right?

A. That is right,—if he had no, absolutely no increase,—no, I beg your pardon,—if he had an increase in only the

labor and transportation and similar costs, which I think are relatively fixed in relation to volume and cannot be escaped, if he had absolutely no increase in cost and could sustain a sixteen per cent volume, he would meet the cost of the stamps. This is the average figure, I am talking about.

Q. And if, in addition to his increase in volume, he could also increase in some of his prices, then on even less of an increase than sixteen per cent he would be meeting the cost of those stamps?

A. Yes, if he could pass the cost on to the consumer he could receive some benefit.

Q. Well, have you considered that trading stamps have been widely distributed for at least sixty years?

A. I understand they have.

Q. And do you understand that trading stamps are widely [fol. 690] used in grocery stores today?

A. Since the development of very intense competition they seem to be,—to have been pretty widely adopted in the American grocery store, yes, sir.

Q. And it is your opinion that all of the grocery stores that are using stamps today are hurting themselves, Doctor, by doing so?

A. If they are not hurting their own profits it is because they are taking volume away from some competitor that it is hurting, and who will soon have to resort to some equivalent practice, and when they do resort to that equivalent practice, I think the benefits from the trading stamps to those grocers will begin to disappear.

Q. You also said that you don't see any similarity between trading stamps and advertising,—do I understand you to say that? Have I stated that correctly?

A. I see no similarity; I think it is an improper classification to classify the cost of trading stamps with the cost of advertising.

Q. Because you say that advertising is something that gives information about goods, and stamps do not give any information about goods, is that right?

A. I said that advertising is a presentation of information, orally, or in writing, in a newspaper or over the radio, about goods,—services, quality, or price, or [illegible] name of a [fol. 691] customer, or a store, or something of that sort.

Q. Well isn't that just what I said to you myself?

A. Well, I expanded your statement a bit, sir.

Q. All right, how would you classify the cost of attracting trade to a store by running contests of one kind or another? Is that an advertising cost?

A. Oh,—

Q. For instance, Safeway gives a trip to Honolula,—I will call that to your attention?

A. And runs an add in the newspaper about it?

By Mr. Swinford:

We object to that, as assuming a fact not in evidence, and as a hypothetical question,—it is not a statement of fact.

By Mr. Beshar:

Show him the ad.

A. I think I can respond to a hypothetical question.

Q. Well Doctor, you have heard of contests in many states by Super-Markets and grocers, haven't you?

A. Yes, sir.

Q. And you know that in some places the grocers advertise automobiles to be given away, they advertise free turkeys, they advertise many kinds of prizes?

A. I would like to point out that they don't give an automobile to every customer; they give it only to a selected [fol. 692] on,—nor a Honolula trip.

Q. Well I am not suggesting that they do anything of the kind.

A. The stamps are given to every person though, sir; it is a part of the sale.

Q. I am only coming back to your statement that stamps can't be advertising because they don't advertise merchandise. Now I am directing your attention to the fact that many advertisements don't advertise merchandise, but do advertise prizes of one kind or another.

A. Mr. Lane, by your argument, a good can of tomatoes, that pleases your customers and tasts good, is an advertisement for the store. By that construction it isn't,—we would not classify that as advertising,—it is merchandise.

Q. Won't you come back to the question that I put to you, please?

A. I thought I had, sir.

Q. No,—how would you classify the cost of running an announcement in a newspaper that an automobile would be given away by a grocery chain?

A. It is advertising,—you have described it,—you have run the ad in the newspaper that you are giving an automobile away.

Q. Well, where would that cost of the automobile be?

[fol. 693] A. I would put it in advertising.

Q. Yes, sir; now doesn't the fact that trading stamps are given in direct proportion to purchases make them classifiable as advertising expense? You say they are not?

A. The fact that they are given in direct proportion to the purchase, and the fact that they are tangible in value, and are passed on to the customer,—those two things in conjunction, yes, sir.

Q. All right, I am not asking you to use two things in conjunction; I asked you whether or not the fact that stamps are proportioned to the amount paid makes it wrong to classify them as cost of advertising?

A. That is a part of the rule,—the reason.

Q. What did you say?

A. I say, that is a part of the reason that they are not advertising.

Q. Do you not consider that trading stamps are a promotional device?

A. Well I grant you that when you bring them on, you promote them, O you advertise them,—just as you promote a crisco, or a peanut butter, and you could probably call the peanut butter promotional, but it is promotional in that sense, if it is another tangible thing of value that you are making available to the customer.

Q. Let me repeat the question that I put to you; are not [fol. 694] stamps, trading stamps, a device for promoting the trade of the merchant who issues them?

A. No more than other merchandise which is promoted in a similar way.

Q. Let me try to direct your attention just to stamps, not to other promotional articles; are not trading stamps

a promotional device for increasing the trade of the retailer who issues them,—"yes" or "no"?

A. Yes.

Q. And is not the cost of a promotional device which promotes the trade of the retailer properly classified,—classifiable as advertising?

A. Not when it is of tangible value,—in the case of stamps, or other merchandise.

Q. That is by your definition?

A. I think by reasonable definition.

Q. Let me put this question to you about the early part of your testimony, when you were talking about the effect of cash discounts, Doctor; suppose a merchant has an item which is for sale at one dollar; that he agrees to allow a discount of two per cent for the payment of cash on or before the 10th day of the following month; assume that a person buys that item for a dollar, paying cash. The amount of money parted with by the purchaser is then ninety-eight cents,—do you follow me so far?

A. I think I do. If he pays before the 10th of the fol-
[fol. 695] lowing month, he pays ninety-eight cents?

Q. Yes; now assume that he had gone into the store and not have even waited for the 10th of the following month, —he spent cash on the head of the barrel,—

A. And paid ninety-eight cents instead of a dollar?

Q. He had to part only with ninety eight cents?

A. What was the listed price on the shelf?

Q. One Dollar.

A. One dollar,—and he paid ninety-eight cents because he gives cash for it at the cash register?

Q. Yes?

A. All right.

Q. Yes; in that situation then, the price is one dollar and he has been given two cents off for paying cash on the head of the barrel,—do we agree on that?

A. Well, I would question whether that was in fact the case; did he have opportunity for credit in the store?

A. Yes, he had a credit opportunity.

A. Then he apparently has been given a two per cent discount for paying cash,—that is right.

Q. All right, now, assume that the same item is involved

and another purchaser goes to the same store and instead of paying cash on the head of the barrel, charges the item, gets a bill, and pays that bill by the 10th of the following month; he, too, parts with only ninety-eight cents,—cor-
[fol. 696] rect,—because, not that he has paid cash on the barrel, but that he has paid within the discount period and so he has earned the discount and his price was only ninety-eight cents?

A. You mean you would give him forty days, if he pays within forty days he gets two per cent off?

Q. Yes, that is right.

A. And the price of this is one dollar,—he actually pays ninety-eight cents,—he has been given a discount, yes. You can write any type of contract you wish.

Q. That is right,—on that type of a contract, which is a two per cent discount for cash, payable on or before the 10th day of the following month,—he has earned the discount by making the payment, and so he has parted with only ninety-eight cents?

A. Because he has met his part of the contractual obligation.

Q. That is right; assume a third person goes into that store, buys the same item priced at one dollar, charges it, and doesn't pay cash on the head of the barrel,—doesn't make settlement of his bill by the 10th of the following month, but lets say, pays it by the 20th of the following month, thereby not earning the cash discount. He then, parts with one dollar?

A. May I assume that there is a third contractual condi-
[fol. 697] tion existing in that situation, that you could either pay cash and get two per cent discount by paying cash now, or take up to thirty days and pay two per cent for extending it on for an indefinite length of time and have no more than the two per cent penalty, is that right?

Q. I am not suggesting any penalty at all, I am suggesting the item was priced at a dollar, two per cent off for payment within a known discount period, with nothing off for payment after that normal discount period?

A. Well my question, Mr. Lane, is it a part of the contract between the grocer and the customer, or the seller and the buyer, that he may take advantage of more than forty days and still not breach his purchase contract?

Q. Yes,—yes.

A. All right, it is a part of the contractual alternative, then, as I understand it, yes.

Q. He has paid, then, a dollar for the same item?

A. Yes, sir, I understand it.

Q. Well lets assume then that still another goes to that same store, and he does not pay cash,—he charges it and he pays sixty days later, and for the delinquent payment is charged two per cent interest; he then, would have parted with $1.02, is that right?

A. Well, I can't conceive of a grocer entering into such a contract,—as charging only two per cent penalty,—but—

[fol. 698] Q. Well did you hear the testimony of Mr. Speed in this very case that that is what he does?

A. No, sir, I didn't understand that that was his procedure; may I state what I understood?

Q. Well let me state that that is my understanding of it.

A. Well it is not my understanding of Mr. Speed's position.

Q. Well whether you concede it or not, if in fact a two per cent charge is made on the payment in arrears, that person has parted with $1.02 for the same article,—Correct?

A. That is right.

Q. Now let me ask you, was that three prices for that item, or was the price each time one dollar?

A. Well, as an economist I would say there were actually three prices; there is a price of ninety-eight cents to whose who conform to one type of contract, as you have specified it; there is a price of $1.00 to those who conform to another contractual situation, and a price of $1.02 to a third.

Q. Do you know the difference between "price" and "terms", Doctor Johnston?

A. I think I do, sir.

Q. What is the difference between "price" and "terms" of sale?

[fol. 699] A. The terms of sale specify these discounts that you are speaking about, but I say, as an economist, the consideration that passes between the buyer and seller, whenever the contract is affected, is the price, and I can see no other interpretation of it,—no other interpretation than that.

Q. Are you not then saying that "price" varies, or is varied by the "terms" of sale?

A. As indeed it is.

Q. That is your opinion?

A. Yes, sir.

Q. Do you think that accountants and economists universally look at it as you just have, or don't you believe that accountants and economists would say that the price of the article was $1.00 and that the amount of money paid depended upon the terms of sale and the time of payment?

A. I think, sir, that economists would almost uniformly agree with me, and I think that accountants are increasingly, and now in the majority, agree with me, yes, sir.

Q. Have you ever read the Oklahoma Unfair Sales Act?

A. Yes, sir, I have.

Q. Are you familiar with the definition of "cost" in that Act?

[fol. 700] A. Well, I would hate to try to recall it verbatum, or even in general.

Q. In general, can you say whether it says anything about the treatment of discounts?

A. I don't recall that it does.

Q. Have you studied any other Unfair Sales Acts throughout the United States?

A. I have read a number of them, but I can't say that I have studied them, no, sir.

Q. Can you say that in any one of those Unfair Sales Acts there is a statement, a provision, as to how discounts ought to be treated?

A. I am not familiar with those.

Q. Well when did you last read the Oklahoma Unfair Sales Act?

A. I think about June the 15th.

Q. Basically, would you say that the Unfair Sales Act of Oklahoma establishes a level at a defined cost below which sales can't be made?

A. Yes, sir, as I understand it, it requires a minimum statutory mark-up of over six per cent, six and three-quarters, something like that.

Q. You understand, don't you, that that Act prohibits sales below invoice or replacement costs, whichever is the lower?

A. Now you are asking me to go into an area of legal [fol. 701] testimony,—I won't venture it, but I don't consider myself an expert in this area.

By Mr. Swinford:

Can we hand him the Statute?

By Mr. Lane:

No.

A. I think, without reference to the Statute, I can tell you at least what I understand it to provide.

Q. All right, do, with respect to cost?

A. As I understand it, you may go below your own cost to meet competitive price.

Q. How does it define your own cost, Doctor Johnston?

By Mr. Swinford:

Your Honor, we object to this line of questions, whether he knows what that Statute provides; I think that is evading the province of this Court. He doesn't represent himself as an authority on the Oklahoma Statutes.

By the Court:

I don't know how in the world this is going to help the Court a bit on that, Mr. Lane. I will have to sustain the objection. I am going to have to pass on that phase of it. The objection will be sustained.

[fol. 702] Q. Doctor Johnston, discounts fall into two broad functional categories, do they not,—those that reduce price, and those which relate to the terms of sale?

A. That is one way of putting them in different catergories; I would suggest that there are other ways that you can catergorize them.

Q. But that is one?

A. That is one.

Q. And that is not an improper method of catergorizing them?

A. Well, for some purposes it is proper.

Q. Is the function of a trade discount to reduce price, lets say from list price, or catalogue price, to the selling price?

A. It is.

Q. Is it the function of a quantity discount also to reduce price where orders are submitted in quantities?

A. That is right, sir.

Q. Those reductions being available without any regard to the time of payment?

A. Well, they certainly will not be continued if the purchaser does not adhere to other parts of the contract of the seller, including the terms of settlement. But of themselves, they do not apply to terms at all.

Q. But of themselves they don't apply to terms at all, that is, on a quantity of ten thousand items available, [fol. 703] whether the items are bought for cash or whether they are bought for credit?

A. That is right.

Q. And the same is true of a trade discount, or quota discount,—it doesn't depend upon the method, or the media, but upon the quota?—the quantity?

A. That is right.

Q. What have you learned from trade discounts of that character which reduce trade to cash discounts; you then find yourself dealing with discounts, a function of which is to fix the terms of sale,—am I correct?

A. No, sir, I differ with you. I think it was once that way; now many years ago I would have raised a question about it,—I am not quite sure,—certainly quite a number of years ago that was one of its characteristics, but today I would suggest to you that it performs a different function. It is in fact a device for reducing invoice price by usually the two per cent, and establishing a device for ticketing the customer's account so that if he doesn't take advantage of the discount you have a little red flag that says "watch this man carefully, he is not resorting to his opportunities which we find it is necessary for him to resort to for him to be a good customer and stay in business".

Q. Now Doctor, we are back where we started again, [fol. 704] on this business of multiple prices resulting

from whether a man takes a discount or doesn't take it, am I right?

A. Well, no,—no, I would make a distinction; I would say, as an economist, I am saying to you that the operation of trade discounts have changed over the last twenty-five years, and what was once perhaps a simple device for inducing cash payment, has now become a device for passing on a reduction from the invoice price and establishing a price lower than invoice, and at the same time giving a guide for a careful selection of customers and investigation of credit.

Q. Is there anything inappropriate in according a discount for the payment of cash, when a seller wants cash, —he will sell on either terms,—credit or cash, but he wants cash,—is there anything inappropriate about his offering two per cent off for cash?

A. If I were his adviser, as an economist, I would say "Yes, there is,—it is inappropriate". There is this inappropriate feature, that if cash is that valuable to you, that you will give the two per cent price reduction for getting your cash ten days earlier, then you had better go to the Bank and offer a very high rate of interest, for you are paying the equivalent of,—oh, maybe as much as thirty-six per cent per annum for getting your cash.

Q. You are not suggesting, are you Doctor, that fellows who do not give two per cent should not give concern to [fol. 705] this?

A. No, sir, but I am suggesting that it becomes a part of a new pricing practice and policy with manufacturers and wholesalers, and it is not related to the desire to get cash early, for if that was their purpose, they are certainly paying an excessive interest rate and much more more than they would need to pay at their Bank, if they are in a reasonably sound business. Let me put it this way, Mr. Lane,—if I could get two per cent,—I am in business myself,—if I could get customers to pay me two per cent more, and not pay me in thirty days, I would welcome it, because I could borrow money from the Bank and make a very comfortable amount more on the capital investment than I now do,—but I can't get my customers to respond in that way. They insist on the cash discount

availability, or the lower price that my competitor is giving through a cash discount.

Q. I suggest that what you are saying is only this, Doctor; if you were running a business you would run it differently,—you wouldn't give a two per cent discount; you would go and borrow money from the Bank?

A. No, sir, I am saying that actually the cash discount is not for the purpose of getting cash,—it is for the purpose of giving a reduction on the invoice price and establishing a device for control over your customer list to [fol. 706] see to it that they don't get in arrears, or if they do, you can investigate them carefully.

Q. Now you have suggested, Doctor Johnston, that you have been unable to find any authority which described trading stamps as a means of giving discount for cash, and that you made a search for such authorities in the library of the University?

A. No, sir, I said that I found no signigiciant study on trading stamps and their uses in our society, and that is the case; I found some studies which I think are questionable,—of questionable value, but I don't know the background of the research people or the way in which the research was conducted, but I found no scholarly treatment on it,—now by that, I mean something in a reputable, scholarly, general work on it; I would like to know about them if they exist.

. . . . . .

[fol. 707] Q. Did your research exclude legal authorities on the subject, then?

A. Yes, I did not read cases and the like.

Q. Now how, Doctor Johnston, would you go about giving a discount of two and a half per cent in cash on an item selling for thirty-nine cents, or less?

A. I wouldn't give it, in the first place.

Q. I don't ask you whether you would; I assumed from your testimony that you wouldn't. I am asking you how, then, it could be done, in cash?

. . . . . .

[fol. 709] Q. Doctor Johnston, you realize, of course, that such stores, there are some in the grocery business that sell on credit, and some stores sell for cash?

A. I do, sir.

Q. Yes, sir, and those,—that those are two types of competition,—one with the other; now in so far as a merchant selling on a cash basis can attract to his store by offering of a discount for cash, additional trade, that is one of his competitive means of meeting the competition of the credit store, isn't it?

A. I cannot answer that question properly without an appraisal of the grocery business, sir; May I give that to you in response to the question?

Q. Well let me simplify it, because I don't mean to get into a long, involved discussion with you,—

A. It need not be long, involved, Mr. Lane, but I can make it very brief.

Q. Well credit is an attraction—

• • • • • • •

Q. Credit is an attraction to trade, is it not?

A. It emphasizes trade, yes, sir.

[fol. 710] Q. A cash discount is an attraction to trade?

A. In the grocery field?

Q. In any field?

A. Sir, I must respond as I understand the question demands a response. I think that a cash discount, or cash,—what you are calling a cash discount, will attract very few people from grocers who are offering credit, for those who buy groceries on credit today are either the higher income and secure group who are not attracted by the lower prices which a cash store can offer, or the very low income and insecure group which cannot afford to take advantage continually of the lower cash prices.

Q. Are you now assuming that only people in poor financial shape patronize the stores that issue trading stamps?

A. No, sir, I am saying that there are some stores which extend credit to people in temporary difficult financial situations,—maybe they are seasonal workers, which a part of the year have a good income, and other times have their low incomes, and have to take advantage of credit terms periodically throughout the year, and in turn they commit themselves to credit stores. And there are the

groups, that because of high incomes, are not too much concerned about the variation in prices and like the convenience of the monthly report and amount due, but the [fol. 711] great mass of the purchases are not by individuals acutely conscious of the price of groceries and responsive to cash selling, and are not affected by the availability of credit in other grocery stores.

Q. The basic assumption of your testimony, Doctor Johnston, is that to issue trading stamps is to cut prices, is that correct,—that is the basic assumption of your direct testimony?

A. Well, it is a situation that I have observed in Oklahoma,—that is the thing that I think is the true history of the trading stamp issue.

Q. And if the value of the trading stamp amounted to two and one-half per cent, redemption, you consider that the price has been cut by two and one-half per cent?

A. That is right, sir.

Q. Now are you aware of the fact that on that assumption, the Thrif-T-Wise merchants in Oklahoma City have been cutting their prices two and one-half per cent on ordinary days, and five per cent on Wednesdays, ever since the fall of 1952?

A. I am not aware of it other than by testimony in the court, and your statement.

Q. Well you have heard that here in the court toom?

A. Yes.

Q. But your research, or investigation, as you call it, [fol. 712] of the Oklahoma City grocery situation indicated to you that Thrif-T-Wise stores,—or the Oklahoma City grocery situation, indicated to you that Thrif-T-Wise stores have thereby intended to establish a monolopy?

A. I don't know whether they have or not, sir. I would doubt it, very much,—I doubt very much that they have been able to establish a monolopy thereby, because I don't think that the grocery trade is very much susceptible to monolopy.

Q. One of your reasons for saying that the giving of trading stamps is not a discount for the payment of cash is that you find there was no such practices in the grocery business,—am I stating it correctly?

A. I went further than that, sir; I said that I did not encounter it as a general manner at the retail level, and knew of no instances of it at the grocery level, unless you could construe that the trading stamp was a cash discount, which I do not construe it to be.

Q. Well if you did, then you would find that it is quite a universal practice today.

A. If I found the trading stamp a cash discount, which I did not?

Q. Yes, sir, but your testimony is based upon the assumption that it is not?

A. It is based upon my conviction that it is not.

[fol. 713] Q. Is there any reason why a retailer cannot, if so minded, should not give a discount for the payment of cash, just as the wholesaler may?

A. There is no law against it, that I know of.

• • • • • • •

[fol. 714] PAUL J. MCCARTY, having heretofore been called as a witness by the defendant herein, and having been sworn and testified in said cause, being re-called by the defendant, further testified as follows:

Redirect examination.

By Mr. Crowe:

Question: Mr. McCarty, I believe you say you are the representative of the S & H Green Stamp Company here in Oklahoma City?

[fol. 715] By the Witness:

Answer: Yes, sir.

Q. Mr. McCarty, you testified that in 1952, that company made contracts with the Thrif-T-Wise group here in Oklahoma City,—dealers in the grocery business?

A. That is right.

Q. I will ask you whether or not there was any restrictions as to areas, with reference to whom you would make the stamps available in the grocery business?

• • • • • • •

[fol. 716] Q. Mr. McCarty, there is no provision in the written contract, itself, as to the amount or limitation of area in which the stamps may be distributed, is there?

A. No, sir.

Q. Now then, did you have an arrangement with the Thrif-T-Wise group of grocers as to the area which would be restricted against any other grocers distributing stamps?

By Mr. Miskovsky:

Just a minute,—your Honor please, we object to that as an attempt to vary the terms of a written contract, and for the further reason that it would be wholly irrelevant, incompetent and immaterial, and not tending to prove or disporve any of the issues herein.

By the Court:

Objection sustained.

By Mr. Crowe:

Well Judge, you are not sustaining the objection on the grounds of varying the terms of a written contract, are you, because the contract is silent on it; it couldn't vary it. I don't know what other ground,—I have attempted to show, your Honor, that they are restricted to grocers in an area of fifteen miles from the grocery store, and that [fol. 717] Safeway, if they had so desired, could not have secured S & H Green trading stamps at the time it reduced the prices, to show that, as far as competition is concerned; to compete in the exact area with these merchants, it was impossible.

By Mr. Miskovsky:

We will object to it as wholly irrelevant, incompetent and immaterial, if your Honor please.

By the Court:

Sustained.

By Mr. Crowe:

The defendant offers to prove, by this witness, and states that if he was permitted to answer the question he would testify that when the S & H Green Stamp Company made its stamps available to the Thrif-T-Wise group, and other grocery merchants in Oklahoma City in 1952, that it was agreed between them and him, as a representative of the S & H Company that the S & H Green stamps would not be made available to any other grocerman in the same line of business, within an area of fifteen blocks from any of the grocery stores who had the stamps, and that the use of [fol. 718] the stamps by these merchants was exclusive within an area within fifteen blocks of the location of their stores.

By Mr. Miskovsky:

We object to the offer as being incompetent, irrelevant and immaterial, and doesn't tend to prove or disprove any issues in this case.

By the Court:

Would the Court understand if they would inquire if you lived more than fifteen blocks from the store, and if you did, that you couldn't have stamps?

By Mr. Crowe:

No,—no, your Honor,—no other grocerman could get these stamps if his store was within fifteen blocks of the store that had the stamps.

By the Court:

Well I understand now; I think it is immaterial. The objection will be sustained.

Q. Mr. McCarty, under the arrangements which S & H had with the Thrif-T-Wise group,—I believe Mr. Speed and Mr. Stockton were not of the Thrif-T-Wise group, is that right?

[fol. 719] A. Mr. Stockton was not, and Mr. Speed was not a member.

Q. Yes,—now I will ask you whether or not in July of 1954, at the time Safeway first reduced these prices under its belief of its right to meet trading stamp competition, whether under your arrangement with the Thrif-T-Wise merchants, and your other grocermen here who had the green stamps, whether it would have been possible for Safeway to have secured the use of S & H Green Stamps in its stores in Oklahoma City, in the grocery business?

* * * * * * * *

A. I didn't negotiate the contract; I can't answer specifically.

Q. Well I believe you told me just before you took the stand that Safeway could not have gotten the stamps at that time, is that right.

A. In my opinion, they could not have.

Q. They could not have gotten them; that is all.

* * * * * * *

[fol. 720] By Mr. Crowe:

We will re-call Mr. Christensen, if the Court please.

* * * * * * *

Direct examination.

By Mr. Crowe:

Question: Mr. Christensen, I will ask you,—as I recall, Mr. Miskovsky, on cross examination, asked you whether or not in your opinion, as a grocerman, from your experience, the reduction of sales prices of articles of merchandise to meet competition would tend to create a price war,—

* * * * * * *

Q. I am going to ask you to tell the Court whether or [fol. 721] not, in your opinion as a grocerman, the reduction of prices to meet a competitive price would tend to create a price war?

* * * * * * *

[fol. 722] A. The question is, whether or not,—I am certain, if I understood the question right,—that meeting

competition would not create a price war, that it is only cutting prices that creates a price war.

* * * * * * *

[fol. 723] Defendant Rests

[fol. 724] Direct examination.

By Mr. Miskovsky:

Let the record show that Mr. L. O. Bowman, Secretary-Manager of the Oklahoma Retail Grocers Association, who testified heretofore, is recalled to the stand.

Question: Mr. Bowman, the other day when you testified, you told the Court that you had prepared, under your direction, in your office, advertisements published in a number of other towns in the State of Oklahoma, making a comparative analysis of the prices therein, indicating those which were at less than cost to the retailer, as defined in the Act, and those where no apparent violation was observed; is that correct?

By the Witness:

Answer: That is true.

Q. Mr. Bowman, will you tell his Honor, quickly, what towns were covered by this analysis?

A. Ada, Bartlesville, Clinton, Cushing, El Reno, Guthrie, Lawton, Nowata, Oklahoma City, Perry, Ponca City, Pryor, Shawnee, Tulsa, Wewoka, Woodward, and Muskogee.

Q. Are there a number of towns that show no violations [fol. 725] at all; is that correct, Mr. Bowman?

A. Yes, sir, that is correct.

Q. That is true of Muskogee, Oklahoma, for the period of time covered by these ads, is that correct?

A. That is correct.

Q. I believe it was testified that there are a number of grocery stores in Muskogee that give the stamps along with the merchandise they sell?

A. Yes, sir.

By Mr. Miskovsky:

Will you waive identification of these instruments, Mr. Crowe (indicating).

By Mr. Crowe:

Well let me ask you something, George; are these a part of the newspapers that were submitted to us for check?

By Mr. Miskovsky:

Yes, sir, they certainly are.

By Mr. Crowe:

Well, we will waive identification of them.

By the Court:

I understood that they had been submitted.

By Mr. Crowe:

Well there were two or three bunches submitted.

[fol. 726] By Mr. Miskovsky:

Yes, sir, these are a part of those, that were submitted to Mr. Crowe, your Honor, and we now offer these in evidence, being Plaintiff's Exhibit "N", through "N-5".

* * * * * * *

By the Court:

Well, they will be admitted for what they they are [fol. 727] worth.

* * * * * * *

[fol. 735] JOHN MORRISON, being called as a witness in behalf of plaintiff herein, after being first duly sworn upon oath to testify the truth, the whole truth and nothing but the truth, upon interrogation by counsel, testified as follows:

Direct examination.

By Mr. Miskovsky:

Question: You may state your name to the Court, please sir?

[fol. 736] By the Witness:

Answer: John Morrison.

Q. Mr. Morrison, you are a resident of Norman, Oklahoma?

A. I am.

Q. Your business and occupation?

A. Retail grocer.

Q. You are an independent retail grocer?

A. I am.

Q. Do you have more than one store?

A. No.

Q. You just have one store?

A. Just one store.

Q. At Norman, Oklahoma?

A. Yes, sir.

Q. How long have you been in the grocery business in Norman, Oklahoma, Mr. Morrison?

A. Since 1942.

Q. What is the name of your business?

A. I operate under the name of the Rite-Way Foodliner.

Q. Where, in Norman, are you located?

A. I am located now at the corner of Crawford and Eufala Streets.

Q. Mr. Morrison, are you a member of the Board of [fol. 737] Directors of the Oklahoma Retail Grocers Association, incorporated?

A. I am.

Q. And have been for how long?

A. I believe six years,—it could be eight years, but I believe it is six.

Q. Yes, sir; you were the President of the Oklahoma Retail Grocers Association at the time the first suit against defendant chain was instituted on July 21st, 1954, is that correct?

A. That is correct.

Q. And also when the suit was instituted on the second occasion, on October 25th, 1954, is that correct?

A. That is correct.

Q. You were a member of the Board of Directors, or a member of the Association when the present Unfair Sales Act was adopted?

A. I was.

Q. And when it was sustained by the Supreme Court of the State of Oklahoma?

A. I was.

Q. Mr. Morrison, you are familiar, as a grocer and manager of your business, and as an officer and director of the Oklahoma Retail Grocers Association, with all phases of the grocery business, is that correct,—pur-
[fol. 738] chasing, selling,—everything that goes into the conduct of the grocery business?

A. Yes, I am.

Q. I will ask you to state what the situation would have been in Oklahoma, had not Safeway been restrained and enjoined by the Court from advertising, offering for sale and selling merchandise at less than cost to the retailer as defined in the Unfair Sales Act?

* * * * * * *

By Mr. Miskovsky:

Well we will strike that question, and maybe we can
[fol. 739] save a little time; I will ask it again.

Q. Would their advertising, offering for sale and selling merchandise at less than cost to the retailer as defined in the Oklahoma Unfair Sales Act tend to deceive any purchaser or prospective purchaser?

A. Well I think so.

* * * * * * *

[fol. 741] Q. If, as Safeway did in this case, advertise, offer for sale and sell, selected traffic items at less than cost to the retailer, as defined in the Oklahoma Unfair Sales Act, would that practice substantially lessen competition or unreasonably restrain trade?

* * * * * * *

[fol. 742] A. Why it is my opinion, yes that would be true, and I might state the reason that I think it would be true,—

By Mr. Miskovsky:

Question: Yes, sir, go ahead?

A. Even though the ad stated—

By Mr. Crowe:

Now I object to that, he is not an expert.

By Mr. Miskovsky:

He hasn't fully expressed his opinion yet.

By the Court:

Go ahead.

A. These ads, as they ran, stated that they were meeting trading stamp competition,—

By Mr. Crowe:

Excuse me,—I am sorry Judge,—now is he talking about the Norman ads,—that they said they were meeting trading stamp competition?

By Mr. Miskovsky:

The Norman ads, or the Oklahoma City ads.

[fol. 743] A. Well either one would have the same effect.

By Mr. Crowe:

Well now I hate to object, but he is expressing an opinion, your Honor,—and unless reference is made to the ad, and what time he is talking about now,—the town.

By the Court:

All right, tell us what town you are talking about.

Q. All right, I will direct your attention to the ads that were run in Oklahoma City and Norman with reference to meeting trading stamp competition; give us your opinion as to that?

A. In Oklahoma City and Norman the ads were run under the guise of meeting trading stamp competition. Well, the boys that had trading stamps didn't feel like they were cutting prices with trading stamps, so they—

• • • • • • •

[fol. 744] A. Let me clarify that; I was not giving trading stamps at that time. I was using cash register receipts on the premium plan.

Q. All right, go ahead with your opinion.

A. And I didn't consider cash register receipts were cutting price, so my reaction to a reduced price of the item would be to reduce my price to meet the price that was advertised under the assumption that they were meeting trading stamp competition.

Q. And you did do that?

A. I did do that.

• • • • • • •

[fol. 745] Q. And when they did reduce their prices, you again reduced yours, is that correct?

A. That is correct.

Q. And when they again reduced theirs below the price, you reduced yours, too?

A. No, the restraining order came into effect about that time.

Q. And had the restraining order not come into effect, what, in your opinion, would have been the result, had that practice continued?

• • • • • • •

Q. Go ahead, Mr. Morrison?

[fol. 746] A. My opinion of the result is, that Safeway would have met my price, less what they considered the value of the cash register receipts I was giving.

Q. And that process would have continued, is that correct, Mr. Morrison?

A. That is my honest opinion.

Q. Yes, sir; and had that situation continued over a long period of time, as to selected traffic items, would that have tended to create a monolopy in the grocery business in Norman, Oklahoma?

• • • • • • •

Q. Go ahead and answer it, Mr. Morrison?

A. In my opinion, that would have tended to create a monolopy in the grocery business, and the reasoning back of that is this, that the independent merchant, in this instance, would have the choice of either meeting prices, those reduced prices, and maintaining his volume at a lesser profit to himself, or maybe no profit to himself, or he could disregard these cut prices and refuse to violate [fol. 747] the Unfair Sales Act.

Q. And what would happen then?

A. He would lose volume.

Q. Yes, sir; you may cross examine.

Cross examination.

By Mr. Swinford:

Question: Mr. Morrison, how long have you been in the grocery business?

By the Witness:

A. Since 1942.

Q. How long have you been in this one at Norman?

A. Since 1942.

Q. What did you do before that?

A. Well, I was manager of a Department Store there from 1938 until 1942.

Q. Now so far as the mark-up on your goods, in the grocery business, do you charge a uniform mark-up on all items?

A. I do not.

Q. Is there quite a wide variance in mark-up on items in the grocery business?

A. Yes, there is.

Q. And that is recognized as a good business practice, isn't it?

A. Well it is recognized as a business practice, I don't [fol. 748] know how good it is.

Q. I hand you what has been introduced in evidence here as Defendant's Exhibit No. 6, and I believe you will find

that the testimony in this case will show that it represents the wholesale prices which the Fleming Company charges to the I.G.A. group; are you familiar with that group?

A. Yes, sir, I am a member of it.

Q. You are a member of it, so you are perfectly familiar with their price set-up?

A. Yes.

Q. Well this is dated September the 13th, and they include in this Exhibit No. 6, do they not, a recommended retail price?

A. A suggested retail price.

Q. Yes,—and do you follow it on occasions?

A. We follow it on nearly all occasions, yes, sir.

Q. Yes,—now calling your particular attention to page 26, and Item 4814 is O'cello Dish Mop; now what is the recommended percentage mark-up on the sale of that item?

A. The percentage mark-up?

Q. Yes, sir?

A. Forty-nine and one-half per cent.

Q. Nearly fifty per cent, and—

[fol. 749] A. Yes.

Q. I call your further attention to Page 33 of this document, Item 649, Lipton's Tea, and I will ask you what the suggested or recommended mark-up on that is?

* * * * * * *

By the Court:

Oh, I think the instrument speaks for itself.

Q. Assuming that Exhibit No. 6, on page 33 recommends to the members of your group, that on the mop, which I first inquired about, you charge a mark-up of 49½%, and on the Lipton's Tea item, only 1%,—in the first place [fol. 750] Fleming is recommending that you violate the law as to Lipton's tea, isn't it?

* * * * * * *

Q. Is that right, Mr. Morrison?

A. I might say there that that price—

Q. Well will you answer my question first?

• • • • • • • •

A. The prices that are in that book are prices that shopped in competitive stores in Oklahoma City, and they use those as suggested retail prices. We do not have to use those prices, or they do not even recommend,—go as far as to tell us that we should. They just tell us that this is what your competition is getting, and that survey is made in Oklahoma City every week.

Q. Yes, that is exactly my point, Mr. Morrison, and Fleming urges you to meet your competitors' prices, don't they?

• • • • • • • •

A. They don't urge it, no.

[fol. 751] Q. They suggest to you that you meet that Lipton's Tea price with a 1% mark-up?

A. That is a suggested retail price; that is for Oklahoma City stores, however.

Q. All right, I won't argue with you; I want to ask you this question,—doesn't Fleming recommend to its members in Oklahoma City that they meet competitive prices on traffic items in this area?

A. I would say that they suggest that they do.

Q. Yes,—even though it only a 1% mark-up, which is in violation of law,—is that right?

A. That is right, but that is meeting a competitor's price.

Q. Yes,—that is what I am talking about; and you can't stay in business unless you do, can you?

A. That is my opinion.

Q. All right, and that is particularly true on traffic items, isn't it?

A. Yes, it is particularly true on those.

Q. Yes, and if you charge a cent more for ten pounds of sugar, in Norman, than your principal competitors do, you won't get the business, will you?

A. I would say the tendency would be that you wouldn't get the business.

Q. Yes,—and if you are two cents over on Flour, and [fol. 752] once cent on sugar, and your ad appears,—what day do you advertise on, Mr. Morrison?

A. We advertise on Thursday.

Q. On Thursday,—your ad appears in the Norman Transcript, I take it?

A. Yes.

Q. —along side of Uhl's, selling sugar two cents lower than you do,—flour a penny lower,—kleenex, you are selling for thirteen cents and they are selling it for twelve,—another advertisement on the next page, Safeway, and that has the same prices; those two stores were your principal competitors,—aren't they?

A. They are two of the principal competitors.

Q. All right, and they are from a penny to two pennies below you on those traffic items; what will that do to your business?

A. Well we meet their prices.

Q. You meet it, and you wouldn't look around to see if it was lawful, would you?

A. No, we don't.

Q. Yes, sir,—and in order to keep from being run off of the street, you have got to meet those prices on those traffic items day by day, item by item, haven't you?

A. I think so.

Q. All right, now what was the value of the cash regis-
[fol. 753] ter receipts which you gave to your customers?

A. In money, or what do you mean by value?

Q. What was it in money?

A. It wasn't worth anything in money.

Q. They didn't redeem it in money?

A. No.

Q. What did you redeem it in?

A. In premiums.

Q. In premiums,—what type of premiums?

A. Well, they were generally nationaly advertised premiums.

Q. Nationally advertised,—groceries,—or nationally advertised—

A. No, premiums.

Q. Well what kind?

A. Oh, household appliances,—kitchen ware,—sporting goods; we have, oh, I would say about a hundred and fifty different premiums, available.

Q. Yes, and were they things of value, in the hands of the customer?

A. Yes, they were.

Q. And how much were they worth, approximately?

A. Well, they run all the way from $3.00 to $69.00.

Q. For a book?

A. No, for a premium.

[fol. 754] Q. Well I am talking about your cash register receipts; how many cash register receipts did you have to accumulate before you were entitled to a premium?

A. Well, that is according to the premium; do you want a percentage?

Q. Yes, if you have the percentage of it?

A. It would amount to around two and a half per cent.

Q. Around two and one-half per cent?

A. At the retail value.

Q. Yes, sir; now, did those cash register receipts prove effective?

A. We thought they were effective.

Q. Yes,—as a matter of fact, Mr. Morrison, you wrote an article for one of the publications, did you not, about the success which you had with your own stamp premium system?

A. No, I didn't write the article; I made a speech in Chicago,—I believe that is what you have reference to.

* * * * * * *

[fol. 755] Q. Turning now to value, Mr. Morrison, you think they were approximately two and one-half per cent of purchase?

A. If the customer saved them, yes.

Q. Yes,—my family live in Norman, and my Mother trades with you. When she goes into your store,—or did, during that period,—and she bought a dollar's worth of merchandise off of the shelf and you gave her cash register receipts which were worth two and one-half per cent of the dollar value, did she buy her groceries any cheaper than she could have purchased them at Safeway?

A. No.

Q. She did not?

A. No.

[fol. 756] Q. What did she receive,—she received, lets take a dollar's worth of sugar,—that is a good average price, ten pounds for a dollar—

A. Well it is in some markets.

Q. —all right, you charged a dollar for ten pounds at one time, didn't you?

A. Well I imagine,—we have been around that figure for a long time.

Q. All right, now suppose that my Mother walked into your store, and she bought ten pounds of sugar for a dollar; she got her sugar, but she also got that cash register receipt. That cash register receipt, according to your testimony, is worth two and one-half per cent of a dollar, or two and one-half cents,—wasn't it?

A. If she wanted to save it, yes.

Q. If she wanted to save it,—all right,—lets assume that she is a very saving woman, and she did save it, and, she received the sugar and the cash register receipt. Now, my mother occasionally trades with Safeway; they weren't giving any kind of premiums at that time, were they?

A. Well, they were giving away,—trying to give away hams, and stuff like that.

Q. I understand, but at that time they were not giving cash register receipts, were they?

[fol. 757] A. Not that I know of.

Q. All right, so upon that occasion, or another occasion, my Mother went to Safeway to buy ten pounds of sugar, and it cost her a dollar and she got nothing else with it, did she?

A. Well as far as I know, she didn't.

Q. All right, which was the better buy?

A. Well of course we think the better buy is at the Rite-Way, all the time.

Q. Yes,—now assuming that you are handling the same brand of sugar,—she got a two and one-half cents value more at your store than she could get at Safeway, didn't she?

A. If she saved her cash register receipt and redeemed it, why she got some extra value.

Q. Yes,—and that is the thing that brought the people

into your store and kept them from going to Safeway isn't it?

[fol. 758] A. Well I never noticed that tendency.

Q. Well it did bring people into your store, didn't it?

A. Well we think it was effective,—an effective piece of promotion,—just like our big parking lot, or if we wanted to give free delivery.

Q. Please don't make that speech, Mr. Morrison,—that comes in the law business; they did come to your store—

• • • • • • •

Q. —and it did increase the traffic into your store, didn't it?

• • • • • • •

A. Let me explain it this way; I might have been able to increase my traffic in volume if I had increased my advertising as much as I was spending for cash register receipts.

Q. But that isn't my question, Mr. Morrison; my question was, did the issuance of those cash register receipts, worth two and one-half cents on every dollar purchase, [fol. 759] have the effect of increasing your traffic,—your trade?

A. Well we think so, or we wouldn't have issued them.

Q. All right, and when they increased your traffic, where did the traffic come from,—didn't it take it away from the Safeway and the other stores that were not giving similar premium coupons, or gimmicks?

A. Yes, that would be true, in a sense.

Q. That is the result, isn't it?

By Mr. Miskovsky:

Now just a minute,—just a minute,—talking about this way of doing business,—are you talking about gimmicks, or cash register receipts now?

By Mr. Swinford:

I am talking about cash register receipts.

By Mr. Miskovsky:

Well all right then.

Q. All right, it increased your traffic, and took it away from Safeway?

A. Well let me state this; I am not sure about any of the advertising, or anything else that we do, what its effect is. We do things, and we hope that its effect will be favorable on the consumer. We spend money for advertising, we spend it for various types of promotion, and we hope that [fol. 760] the effect will be good. So far as pin-pointing the cash register receipts, and saying that they took business away from Safeway, why I couldn't honestly say that that was true.

Q. It is a little hard to tell, because you don't have the figures, but that is what you intended to do, wasn't it?

A. I intended to increase my traffic.

Q. Yes, sir, and you knew that if you increased yours, you would do so at the expense of those who were not giving similar cash register receipts or stamps, didn't you?

A. Well not necessarily; it would be at the expense of those that were giving them, if they were giving them.

Q. It would take some away from them, but you would also take some away from those that were not giving them, wouldn't you?

A. Well that would be a proper assumption.

Q. Yes, and that is what you intended, is that right?

A. Well, I intended for it to increase my business; I wasn't looking to any particular competitor and saying, "I am going to get your customers with this gimmick".

* * * * * * *

[fol. 761] Q. Now Mr. Uhl, at that time, was giving green trading stamps, wasn't he?

A. That is right.

Q. That wasn't, at the adoption by Mr. Uhl of the green trading stamps, that caused you to adopt the cash register receipt system?

A. Well, I wouldn't say that it was Mr. Uhl, necessarily; I have been watching the trading stamp promotion, as such, in the trade, and they seem to be an effective sales promotion, in talking with, not Mr. Uhl or my competitors, but with other people, and I adopted the cash register form as a similar promotion that I thought would be better for my store than even the trading stamp plan.

Q. Sure,—some of your customers complained prior to that time because you weren't giving stamps, didn't they?

A. No,—no, I didn't have any complaints,—not that I know of.

Q. You didn't?

A. No, I didn't have any complaint,—not that I know of; they may have, but they didn't complain to me.

[fol. 762] Q. Now when did you adopt this cash register receipt system, Mr. Morrison?

A. January the 1st, 1953.

Q. And did you, after that, start giving double cash register receipts on Wednesday?

A. That was some two or three weeks later, I believe, yes.

Q. And were the double cash register receipts more effective, in your opinion, than the single cash register receipts?

A. Yes, they were.

Q. It got more business into the store?

A. It was a gradual building up process,—I wouldn't answer that that it got more business in my store, because I don't know that that actually happened, but we did do more of our business on Wednesdays, but our records will show this,—I might go ahead to explain that our total volume didn't increase when we started giving double cash register receipts, and vice versa, when we discontinued it our total volume didn't decrease, but our traffic throughout the week did tend to level out when we discontinued it, and our traffic built up on Wednesdays when we did have the double cash register receipts.

Q. All right, on Wednesdays, when you were giving these double cash register receipts, the Norman housewife that [fol. 763] came into your store in need of ten pounds of sugar, which was then being sold for a dollar, she got ten pounds of sugar plus cash register receipts worth a nickel, didn't she?

A. Well, if she wanted to save them and redeem them,—that is the rate we redeemed them at on premiums, yes.

Q. And that means, does it not, Mr. Morrison, that the sugar only cost her ninety-five cents?

A. No, it cost her a dollar.

Q. Oh, it did?

A. Yes.

Q. Well, did the cash register receipt cost her anything?

A. They didn't cost her anything, no, sir.

Q. You didn't sell the cash register receipt, unless they made a purchase, did you?

A. Our cash register don't issue receipts unless they make a purchase.

Q. I see, so in order to get a cash register receipt, they had to make a purchase?

A. That is right.

Q. And you didn't give those cash register receipts to the housewife, did you,—was that a free gift, in your opinion?

A. Yes, it was, entirely free.

[fol. 764] Q. A free gift?

A. Yes.

Q. Now Mr. Morrison, Plaintiff's Exhibit "C", is that the advertisement you had reference to in your testimony,—your direct testimony?

A. Well I had reference to this one, and also the one that was run in July, yes. I saw both of them.

Q. All right, now what is there, Mr. Morrison, in that particular advertisement that would indicate to you that the ad might conceivably deceive someone?

A. Well, here is the going price, and the minimum pride on baby food, I believe, is three for a quarter,—now I think that possibly a hundred per cent of the stores would sell it three for a quarter, and this comes out three for twenty-three cents, which I think is below the minimum retail price under the Oklahoma Unfair Sales Act.

Q. I understand, but if you read it could you be deceived,—it states in the advertisement that it is being lowered,—that wouldn't deceive anybody, if they did in fact lower the price, would it?

A. Well, the statement—

By Mr. Miskovsky:

He wants you to explain the deception.

A. Well, the thing that was deceiving about it, there only less than twenty-five items here that is reduced,—they say

[fol. 765] they are reducing the prices, and they didn't reduce the prices.

Q. Well now wait just a minute, lets see what the ad says, it says—

* * * * * * *

Q. All right, I will direct your attention to this then; it says,—this language,—"In addition to the hundreds of prices that Safeway has reduced during the past few weeks, Safeway has now lowered prices on many staple items below the current established retail prices. The prices on many of the items listed in this ad"—it doesn't necessarily [fol. 766] refer to any other items in the store, does it,—it just refers to the ones in this ad,—right? It doesn't include all the others, does it?

A. No.

Q. It merely says, "on many of the items listed in this ad are lowered, to meet double trading stamps",—now that is all it says.

* * * * * * *

Q. Now Mr. Morrison, there is nothing in the language of that ad which would deceive you, or anyone else, that could read, is there?

[fol. 767] A. Yes, there is.

Q. Tell me the language of the ad which deceives you?

* * * * * * *

Q. Well let me first limit it to the language, and then you can go from there; show me the language which would prove deceptive to anyone with understanding who could read the English language?

A. Well now here it says "In addition to the hundreds of prices which Safeway has reduced, they are again—

Q. Yes, sir,—

* * * * * * *

A. —during the past few weeks Safeway has lowered prices on many staple items below the current retail level". The thing that is deceiving about that is, it would indicate to me, if I were a consumer, that I could go to Safeway and [fol. 768] buy my merchandise cheaper.

Q. Well you could, couldn't you?

A. Nope.

Q. Well assume, Mr. Morrison, that Safeway had, in previous weeks, reduced practically everything in its store; then would you think that would result in deception?

• • • • • • •

A. If they had reduced everything in their store, and would so state, I wouldn't think it would be any deception.

Q. But supposing they had done it without stating it in this advertisement,—they had, in fact, reduced every item in their store,—there wouldn't be anything deceiving about this, would there?

A. No,—I mean there wouldn't be anything deceiving when you didn't have a statement.

• • • • • • •

[fol. 770] Q. Mr. Morrison, one other question; will you assume with me for a moment, that when a housewife came into your store on a double stamp day, and bought ten pounds of sugar and paid you a dollar and received a [fol. 771] cash register receipt worth five cents, will you assume please, that she thought she was getting a bargain and she was buying cheaper,—that the sugar only cost her ninety-five cents; all right, now given that situation, if you were running the Safeway store in Oklahoma City,—I mean in Norman,—how would you meet that type of competition?

By Mr. Miskovsky:

Just a minute,—we will object to the form of the question as being argumentative, and an improper hypothetical question.

By the Court:

Sustained; it is argumentative.

• • • • • • •

[fol. 772] By Mr. Swinford:

We offer to show that if this witness was permitted to testify that he would state that if he were operating Safeway store at Norman, in the case of that type of competition,

that he would do one of two things,—he would either adopt some type of valuable premiums equal to or in excess of the value of the cash register receipts, that he was doing, or more directly, would merely reduce his price to ninety-five cents on the sugar to meet the equal values which he was then giving in the form of cash register receipts.

By Mr. Miskovsky:

Now I am going to withdraw my objection and just let the witness state what he would do,—he said he would do that.

By the Court:

Very well.

Q. What would you do if you operated Safeway store, in the face of that competition?

[fol. 773] A. Well, I will take my own store, for example,—

Q. Well I didn't ask you that, Mr. Morrison; what would you do?

A. The only way I can answer that is tell you what I did do.

Q. No, I didn't ask you what you did do.

* * * * * * *

Q. All right, go ahead?

A. We had stamp competition before we went into the cash register receipt plan, and we had that for seven months, I believe, before,—I believe they went in in June, and we went into the cash register receipt plan the first of the year.

Q. It was pretty tough, wasn't it?

A. No, not too tough, but, what I actually did do was adopt a plan,—I didn't cut prices,—I didn't think they were cutting prices,—

Q. I didn't ask you what you thought,—go ahead?

* * * * * * *

A. —I didn't cut prices to meet them,—to meet a price that I didn't think existed,—but I did adopt a plan that I [fol. 774] thought would be, as we would say, effective with the consumer, as the stamp plan, and I think that is what I

would have done, if I had had free-hand, had I been running a Safeway store.

Q. You could accomplish the same thing by reducing your price, couldn't you?

A. No,—no, sir.

Q. Why?

A. Well, I don't think the consumer,—I mean your hypothetical case of the consumer coming in and buying sugar identifies this,—I don't think she looks at it that way at all. She thought she was paying a dollar for that sugar, but she did get these cash register receipts that are worth something to her if she wanted to save them. So she was getting something extra at the Rite-Way; she was getting something at the store that gave delivery,—I mean consumers have lots of reasons for trading at certain stores.

* * * * * * *

[fol. 775] Q. Well, one more question, Mr. Morrison; you thought she was getting something extra, didn't you?

A. I felt like it was something extra; I think the consumer can get something extra in lots of different ways.

Q. I am trying to shorten this; you thought it was something extra, and you knew that it was worth a nickel on the double stamp day, when she spent a dollar, didn't you?

A. If she wanted to save it why it was worth that on a premium, yes.

* * * * * * *

Redirect examination.

By Mr. Miskovsky:

Question: Mr. Morrison, you have been affiliated with the Independent Grocers Alliance in Oklahoma for how long?

A. Since,—well, I went into business in March of 1942, and I have been affiliated with the Independent Grocers Alliance since October of 1942.

Q. And you are acquainted with Mr. Dolf Pemberton, who is the pricing man for the Fleming Company, the I.G.A. [fol. 776] depot, is that correct?

A. That is correct.

Q. And you are familiar with the method with which they compile the recommended selling prices in this book?

A. I am.

Q. They shop the principal competition, do they not?

A. They do.

Q. The principal competition is Safeway, and Standard Humpty-Dumpty, in this community, isn't that correct?

A. That is correct.

Q. And if a recommended selling price is below cost to the retailer, as defined in the Oklahoma Unfair Sales Act, it is based upon that competition, isn't it?

A. Yes.

Q. Not all merchants meet the prices which are obviously violative of the Oklahoma Unfair Sales act, do they?

A. No.

Q. To that extent, competition is limited by violations of the law, are they not?

A. That is right, it is.

Q. You didn't reduce your prices to meet the value of Safeway's trading stamps, did you?

A. No.

* * * * * * *

[fol. 777] Q. Mr. Morrison, is Safeway chain issuing stamps in the City of Norman now?

A. Well if they haven't quit the last day or two, they are.

Q. They are,—and that is the Cash-Saver stamp, and they [fol. 778] are valued at three per cent on the volume of purchase, is that correct,—one and one-half cents on fifty cents, or three cents on a dollar?

A. Yes.

Q. You have not used that as an excuse, or otherwise, to reduce your prices below theirs, have you?

A. No.

* * * * * * *

Q. When you were questioned about whether the commercial value of your cash register receipts, when and whether ot not it was diverting customers from Safeway,—you had no patent on that plan, did you?

A. No.

Q. Safeway was free to adopt it or not, as they saw fit, were they not?

A. Yes.

[fol. 779] Q. Although their policy, being directed from Oakland, was not as flexible as yours, was it?

A. Yes, that—however,—

* * * * * * *

A. The answer was intended to be "yes"; I did say "yes, however", but didn't finish it.

* * * * * * *

[fol. 781] Q. When you had stamp competition, or cash register receipt competition, you met it with like competition, did you not?

A. Yes.

Q. When you had price cuts in the community, to protect yourself until that could be eleviated, you met it with like competition, did you not?

A. I did.

[fol. 782] Recross examination.

By Mr. Swinford:

Question: Mr. Morrison, are you still giving double stamps?

By the Witness:

Answer: No, sir.

Q. Are you giving single stamps?

A. Yes, sir.

Q. Did I understand you to tell Mr. Miskovsky that the suggested prices in the I.G.A. catalogue, marked Defendant's Exhibit No. 6, are prices which they found their principal competitors to be charging in Oklahoma City, namely, Safeway and Humpty-Dumpty?

A. Yes.

Q. So that the I.G.A. does not set its own prices, but they wait until Safeway and Humpty-Dumpty establish the prices, and then they follow them, is that correct?

A. That is not correct.

Q. These suggested prices are based upon Safeway's and Humpty-Dumpty's,—is that what you testified to?

A. They are based upon that, but there are some exceptions.

[fol. 783] By Mr. Swinford:

Well all right, that is all.

By Mr. Miskovsky:

That is all, your Honor.

(Witness excused)

* * * * * * *

DISCUSSION RE EXHIBITS

By Mr. Miskovsky:

Your Honor please, I would like to inquire of Mr. Crowe if he has that information that we wanted.

By Mr. Crowe:

Yes, I do have, Judge. I would like to make a record on it. I think it might be best, if your Honor please, to have Mr. Christensen identify these.

By Mr. Miskovsky:

No, we will waive the identification, if your Honor please.

[fol. 784] By Mr. Crowe:

Well now I would like to have them,—I don't want them designated as my exhibits, but I would like to have them designated as exhibits so that I can make a record.

By Mr. Miskovsky:

Make them Plaintiff's Exhibit, that will be agreeable; have them identified as our Exhibits, and the record already shows how they are exhibited.

By Mr. Crowe:

Well I would like to make a record; have them identified as your Exhibit, that will be all right. (same is marked Plaintiff's Exhibit "O", "O-1", and "O-2"). Now your Honor please, I offer,—I will first inquire of counsel if identifica-

tion of Plaintiff's Exhibit "O", "O-1" and "O-2", which relate to the percentages of volume and quota heretofore discussed with your Honor, and in the record,—will you waive identification of those?

By Mr. Crowe:

That is right.

By Mr. Miskovsky:

Then, if your Honor please, with the identification having been waived as representing various facts in the Cities of Oklahoma City, Norman, Enid, Tulsa, and Muskogee, as relating to the defendant chain, we offer them in evidence.

[fol. 785] By Mr. Crowe:

Now if the Court please, the defendant, Safeway Stores, objects separately to Exhibits "O", "O-1" and "O-2", for the reason that the same, and each of them, are incompetent, irrelevant and immaterial, and for the second reason, that they give information taken from private business records of the defendant, and are sought to be used by the defendant's competitors in this case who are grocermen in competition with the defendant, and not being material to the issues, the confidential nature of them should be preserved by the Court. Further, that in the taking of depositions heretofore, the defendant, Safeway Stores, has furnished to the plaintiff a national publication as to the volumes of food sales in the various towns covered by these exhibits, and that by compelling them to be made public, or admitting them in evidence in this case, the Court is compelling Safeway to disclose to its competitors the volume of business which it did in the towns affected in the latter part of 1954, it being merely a mathematical computation to apply the percentages to those total volumes of food sales in order to determine the dollar value volume of the sales of Safeway during this period, in those towns. And for the further reason that the Court has heretofore declined to permit the defendant to show what was the volume of sales of the plaintiff, Louie Speed, or to secure from him any informa-
[fol. 786] tion from which the defendant might compute

his volume in percentages, or otherwise, and that to require this defendant to disclose to its competitors that which the Court refused to compel its competitors to disclose to it, would be a denial to the defendant of equal treatment in this case.

By the Court:

The objection is overruled.

By Mr. Crowe:

To which the defendant excepts.

* * * * * * *

[fol. 788] By Mr. Miskovsky:

Did you specify Midwest City, your Honor?

By Mr. Crowe:

It is not kept separately, in our record.

By the Court:

That is the way I understood it.

By Mr. Miskovsky:

Then let me ask this; the seven and one-half percent referred to—

By Mr. Crowe:

Now I am objecting to that, now, because these are for the information of the Court only.

By Mr. Miskovsky:

All right, that was in the affidavit; I am not saying anything about the percentage; that related to Oklahoma and Midwest City, is that correct?

By Mr. Crowe:

That is what I understand.

VOLUME II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 252

SAFEWAY STORES, INCORPORATED,
APPELLANT,

vs.

OKLAHOMA RETAIL GROCERS ASSOCIATION,
INC. AND LOUIE J. SPEED, INC.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 252

SAFEWAY STORES, INCORPORATED,
APPELLANT,

vs.

OKLAHOMA RETAIL GROCERS ASSOCIATION,
INC. AND LOUIE J. SPEED, INC.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

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By Mr. Miskovsky:

All right, then that clears the record on that point.

By the Court:

All right, you may call your next witness.

[fol. 789] By Mr. Lane:

The plaintiff calls, as its next witness, Mr. William Sperry Beinechi.

* * * * * * *

Direct examination.

By Mr. Lane:

Question: Mr. Beinecki, will you state for the record your name and resident address?

By the Witness:

Answer: William Sperry Beinecki, 20 Prospect Avenue, Summit, New Jersey.

Q. What is your business address?
A. 114 5th Avenue, New York City.
Q. With what Company are you associated?
A. The Sperry and Hutchinson Company.
Q. In what capacity?
A. I an Vice-President and General Counsel.
Q. Then you also are a member of the Bar?
A. Yes, sir, I am.
Q. In what State?
A. New York.
[fol. 790] Q. When were you admitted?
A. In February, 1941.
Q. Do you then, as Vice-President and General Counsel of the Sperry-Hutchinson Company, have the responsibility to handle and follow all of the litigation in which Sperry and Hutchinson is interested, either directly as a party, or in which it has a financial interest?
A. I have that responsibility.

Q. Who organized the Sperry and Hutchinson Company?

A. The Sperry and Hutchinson Company was founded by Thomas A. Sperry and Shelly Hutchinson, as a partnership, in 1896. After operating for four years in that way, they decided to incorporate it, and did so, in 1900.

Q. Under the laws of what State?

A. New Jersey.

Q. Who was that Thomas A. Sperry?

A. Thomas A. Sperry was my—

By Mr. Swinford:

We object to the matter of organization, on the grounds that the history of the Sperry and Hutchinson Company is not here involved, and serves no useful purpose in this litigation.

By the Court:

That is what I was thinking, gentlemen. According to the pleadings, I don't know what interest Sperry and [fol. 791] Hutchinson have.

By Mr. Lane:

Well your Honor, very briefly, Sperry and Hutchinson Company is the Company that furnishes the trading stamp that is used by Thrif-t-Wise, and Speed, and a great deal of the testimony in this law suit has had to do with the purpose and intent and effect of the use of those Sperry and Hutchinson stamps. You will recall, I think, that the witness, Doctor Johnston, said that this was not only a very risky business, but it was, from the point of view of the grocer, uneconomical, and from the point of view of the housewife, uneconomic, and you will recall, also, that Doctor Johnston testified that at retail there was no such thing, that he could find, as a discount for the payment of cash.

Through this witness, we propose to prove the nature of the trading stamp business as carried on by the Sperry and Hutchinson Company, the extent of it, the time that it has been carried on, and success which it has achieved throughout the Nation in general, and in Oklahoma, in

[fol. 792] particular, and this witness is one, who all of his adult life, in one way or another, has been familiar with that business, and is therefore, today, we think, the best qualified to explain that to to the Court. We propose to be brief with it; as a matter of fact, to save time, I have prepared a memorandum which gives the status of the business all over the country and that would telescope the testimony very materially, if received when I offered it.

By the Court:

Well now there are just certain issues in this case, as the Court sees it. First, did Safeway sell below the statutory price,—the thing is, was it justified, or was it done with a wrongful intent. They admit they reduced them, and say they did it to meet the trading stamp competition in Oklahoma City, and the other locations, because somebody else had reduced the prices. If the stamps were not a reduction in price, that is one thing, and if they were a reduction in price, that is another. Now I don't see what interest, or how it would help the Court, to have the Sperry and Hutchinson Company in here defending themselves; [fol. 793] they are not a party to this law suit. I think the whole question is, whether or not Safeway had a right to reduce the prices,—whether they were justified under the conditions, and whether they were justified in doing what they did do.

By Mr. Lane:

Well I quite agree with your Honor.

By the Court:

I think that is the basic issues in this case.

By Mr. Lane:

You are absolutely correct, your Honor.

By the Court:

And I don't know how it would help the Court to bring this all in.

By Mr. Lane:

Well may I suggest to your Honor how we think it would help the Court; Safeway says it is only meeting a lower price, which results from the issuance of trading stamps. Now, to ascertain whether or not the trading stamps lower the price, it seems to me that the record should indicate just what the trading stamp business is, whether it is a [fol. 794] means of affording a discount for cash on small purchases, or whether it is a concealed price cut. Now this is a business—

By the Court:

Well isn't that better determined by the acts of the men who were giving the stamps, what their intention was, not what—I just can't see how this is going to help the Court at all.

By Mr. Lane:

Let me make an offer of proof, and then perhaps we can let it go at that; that, I take it, is agreeable.

By the Court:

Well Sperry and Hutchinson may intend for one thing, but what do these merchants that have alread testified,—what are their intentions,—and what it means to me.

By Mr. Lane:

Well, what it means to the merchants, your Honor, must, it seems to me, in at least a material part, depend upon what it is that the Sperry and Hutchinson Company is doing. Our position on that is, that the Sperry and Hutchinson Company is engaged in providing a discount service [fol. 795] for the merchant. That is what is described in their contract. If you become a subscriber to the Sperry and Hutchinon service, and use its trading stamps as a means of affoding a discount. In fact, they are called cash discount stamps. Now that service, sold on that basis, is what seems to me to effect, to some extent, the merchant's reaction to the service.—

By Mr. Swinford:

Your Honor, we take the position on that—

By Mr. Watts:

Well wait a minute,—lets eliminate all of this argument. Lets make an offer of proof; it would save re-hashing it, and having to dictate it.

By Mr. Lane:

We would like to have this instrument marked as one of Plaintiff's Exhibits. (Instrument marked Plaintiff's Exhibit "P", and is handed to the Court for examination).

By the Court:

Is this going to be your offer?

By Mr. Crowe:

The defendant will waive identification of Plaintiff's [fol. 796] Exhibit "P".

By the Court:

Is that what this man is going to testify about?

By Mr. Lane:

Yes, sir.

Q. I show you Plaintiff's Exhibit "P", Mr. Beinecki, and ask you whether that is a copy of a memorandum which you have checked for accuracy?

A. Yes, I have checked this; there is one correction that ought to be made. The reference in respect to Alabama, that the Company is qualified in that State, but is not. They are doing business, however,—in the past few weeks the Company has expanded its business to the State of Alabama, and this summary should be corrected to reflect that change.

Q. If you were asked by me about the extent of the Sperry and Hutchinson business status, that is to say, the States in which it is qualified and the States where it is

doing business, would your answers substantiate what that memorandum shows?

A. Yes, with the one qualification that I just made.

Q. Yes, and would you answer, if I asked you about the regulation of the trading stamp business in the forty-eight states, would your answer also reflect what appears on [fol. 797] that memorandum?

A. Yes, sir.

By Mr. Lane:

I offer the memorandum in lieu of the testimony of the witness.

By Mr. Swinford:

To which the defendant, Safeway, objects for the reason that it is incompetent, irrelevant and immaterial, and for the further reason that it constitutes hearsay, is a document prepared under the supervision of the witness who is present in court, and for the further reason that it consists of legal citations which invades the province of the Court in so far as the legal conclusions contained therein are concerned, and the defendant, Safeway, further objects to the document, both as to its introduction in evidence, and its offer here by Sperry and Hutchinson, who is not a party to this action, and for the further reason that it is an improper offer of proof or profer, containing, as it does, legal arguments and not statements of fact, and were the statements those facts, it would clearly be heatsay.

By the Court:

The objection will be sustained.

[fol. 798] Q. Mr. Beinecki, are you generally familiar with the way in which the Sperry and Hutchinson Company does business in the State of Oklahoma?

By Mr. Swinford:

We object to that, as being incompetent, irrelevant and immaterial, and having no bearing on this litigation, the Sperry and Hutchinson Company not being a party.

By the Court:

Objection sustained.

By Mr. Lane:

We offer to prove, by this testimony, your Honor, that the Sperry and Hutchinson,—or by this witness,—that the Sperry and Hutchinson Company does business today in Oklahoma, under the plan reflected by the Exhibits attached to the pleadings, and that it does that same type of business throughout the United States,—or rather throughout forty-seven of the forty-eight states, and that it has been engaged in that same business for the past sixty years.

By Mr. Crowe:

The defendant objects to the offer.

By the Court:

Sustained.

[fol. 799] Q. Do you know, Mr. Beinecki, how long the Sperry and Hutchinson Company has been engaged in this business in the State of Oklahoma?

. . . . . .

A. Yes.

Q. How long?

. . . . . .

A. For a period of approximately forty-five years.

. . . . . .

[fol. 800] Q. Mr. Beinecki, what is the nature of the services which the Sperry Hutchinson Company provides to retail merchants?

By Mr. Crowe:

We object to that, for the reason that the contract is the best evidence, and it calls for a conclusion of the witness.

By the Court:

Sustained.

Q. Are you familiar, Mr. Beinecki, with the benefits of the Sperry and Hutchinson cash discount services, and can you describe that benefit to the retail merchants?

By Mr. Crowe:

I object to that as incompetent, irrelevant and immaterial.

By the Court:

Sustained.

By Mr. Lane:

Then, in view of the Court having sustained the objection, I wish to state that if this witness were questioned on the subject, he would testify that through the use of the Sperry and Hutchinson cash discount stamps, the retail merchant who is in the cash and credit business, as for [fol. 801] example, Mr. Speed, has a device not only for putting his business on a cash basis, but he also has a competitive to the merchant who does business on a credit basis. And we offer, also, to prove by this witness, that through the use of these cash discount stamps, the merchant has a means of building his volume of sales, and thereby making a more efficient use of his facilities without, at the same time, proportionately increasing his cost, and that the economic effect of that, from the Merchant's point of view, is by giving him a more efficient operation to give him larger profits.

I offer, also, to prove by this witness, that in so far as the use of cash discount stamps converting credit accounts into cash accounts, the merchant is spared all of the expenses attendant upon running credit accounts, such as book-keeping expenses, bad debt loses, and other costs that necessarily are incurred in operating on a credit basis.

And I would offer to prove by this witness, also, that the use of trading stamps is a promotional, or advertising [fol. 802] device, which is tied directly to the volume of sales, and like advertising in newspapers, and that although

trading stamps do not take the place of conventional advertising, it is like conventional advertising as a promotional device.

By the Court:

I think that evidence is already in here, substantially, by the interested parties, practically in the same manner, by the parties who are interested in this law suit, according to the pleadings.

By Mr. Lane:

And I would offer to prove by this witness, finally, your Honor, that the use of a trading stamp, such as the Sperry and Hutchinson trading stamp, has the added advantage and attraction, when used by a retail merchant, of being the same program of a discount which is also used in the same coummunity by retailers in other lines of commerce, such as dry goods, gasoline, hardware, and what not, and that through the general availability of the Sperry and Hutchinson trading stamps, in intergraded family retail accounts, they provide an inducement which a discount [fol. 803] given in cash purely would not provide.

By Mr. Crowe:

The defendant objects to that for the reason that it is incompetent to show through this witness, and is irrelevant to any of the issues in this case.

By the Court:

Well I think it is already in here by the interested parties,—parties to the litigation. Sustained.

* * * * * * *

Q. I will ask you whether, in your opinion, the stamps do provide a discount for cash on purchases, as well as being promotional, or whether these stamps are price cutting devices?

* * * * * * *

[fol. 804] A. Well I don't think I can answer it "yes" or "no", because—

By the Court:

Well he asked you if you knew.

A. Oh, yes.

Q. All right, is it, in your opinion, a method of affording a discount for cash?

By Mr. Swinford:

To which the defendant, Safeway, objects, as being incompetent, irrelevant and immaterial, and it is asking for an opinion from a man who is a member of the Bar and is not a qualified expert in economics, in accounting, or any field of similar endeavor, and that he cannot express, from this stand, cannot make any statement on the vital issue in this case which affects the immediate parties to the suit, the witness having represented, or does represent the Sperry and Hutchinson Company.

• • • • • • •

[fol. 805] By the Court:

I think this contract explains exactly what the Sperry-Hutchinson people do when they license a man.

By Mr. Lane:

They call this an account system service which they purport to sell.

By the Court:

The objection will be sustained; the contract is the best [fol. 806] evidence; I think it will show. I have read it several times; it states exactly what they do.

By Mr. Lane:

Yes, sir; well then Your Honor, I offer one final, very short, proof in lieu of questioning the witness, and with that, I will quit.

If this witness were asked, I submit to the Court that he would testify that the Sperry and Hutchinson Company engage in the business which is stated in their contract, namely, the providing of a cash discount service, and that

the cash discount does not cut the price with relation to the stamp, and has so been carried on for about sixty years.

By the Court:

I will let him answer that question; he is referring to the contract.

By Mr. Swinford:

Yes; let the record show our objection to that, for the same reason that we objected on the other evidence offered, that it invades the province of the Court.

By the Court:

Well, he is just merely saying "That is what we do, what [fol. 807] is in the contract". I will let him answer that.

By Mr. Swinford:

Exception, please.

A. The Sperry and Hutchinson Company carries out its business of making available the cash discount system to retail merchants in Oklahoma and elsewhere, in accordance with this contract.

* * * * * * *

A. The stamps which it distributes, and which are issued by merchants, are done so to afford to retail customers, a discount for the payment of cash, which is not—

* * * * * * *

[fol. 808] By the Court:

Yes, you intend, and do carry out, the terms of the contract which you enter with these merchants, or of the contract which has been introduced here by Speed, is that right?

A. Yes, sir.

Q. And have done so for how many years?

* * * * * * *

A. Nearly sixty years,—since 1896.

* * * * * * *

[fol. 809] Q. All right, I will ask you another question; how long, to your knowledge, has this type of contract been used in Oklahoma?

* * * * * * *

A. Approximately forty-five years.

* * * * * * *

[fol. 811] MAURICE E. PELOUBET, being called as a witness in behalf of plaintiff on rebuttal, after being first duly sworn upon oath to testify the truth, the whole truth and nothing but the truth, upon interrogation by counsel, testified as follows, to-wit:

Direct examination.

By Mr. Lane:

Question: Mr. Peloubet, will you state your full name and your residence address?

By the Witness:

Answer: Maurice E. Peloubet, 435 East 57th Street, New York City.

Q. What is your business address?
A. 25 Broadway, New York City.
Q. What is your profession?
A. Certified Public Accountant.
Q. How long have you been a Certified Public Accountant?
A. Since 1921.
Q. Have you devoted substantially all of your time to public accountancy since that time?
A. All of my business time, yes, sir.
Q. Both in this country and abroad?
A. Yes, sir.
Q. In your preparation for this trial, have you prepared for me a statement of your professional attainments and [fol. 812] the articles that you have written on accounting subjects?

A. Yes, sir.

Q. Is this that statement? (Counsel submits instrument to witness).

A. That is it, yes, sir.

By Mr. Lane:

If the Court please, we offer that statement in evidence.

By Mr. Crowe:

To which the defendant, Safeway, objects for the reason that it is incompetent, irrelevant and immaterial, and will merely serve to encumber the record. We will admit that he is a Certified Public Accountant, and is practicing in the field of accountancy.

By Mr. Lane:

It seems to me, your Honor, that in order to expidite matters, that if we offer this it would save me taking him through it,—this statement would save me taking him through this history of his qualifications. (Hands instrument to the Court). This is the statement which he has prepared, your Honor.

[fol. 813] By the Court:

Oh, it will be admitted.

By Mr. Crowe:

Please note our exceptions.

Plaintiff's Exhibit "Q"
Oct. 21, 1955—No. 134,533
E. J. Grantz, Reporter.

Biographical Sketch

Maurice E. Peloubet

Maurice E. Peloubet was born in Chicago, Illinois and attended school there, in Butte, Montana and East Orange,

New Jersey. He entered the New York Office of Price, Waterhouse & Co. in 1911 and also attended New York University School of Commerce, Accounts and Finance. He was transferred to the London Office of Price, Waterhouse & Co. in November 1914 and worked on engagements in England, Ireland, Holland, France and other European countries.

He returned to the United States in 1919 and entered the employ of Pogson, Peloubet & Co., becoming a partner of this firm in 1921.

He is a Certified Public Accountant of New York, New Jersey and Texas and is a member of Council of the American Institute of Accountants. He has been active in accounting organizations, having been vice president and treasurer of the American Institute of Accountants, as well as chairman of the board of examiners and chairman or member of a number of committees. He has been president of the New York State Society of Certified Public Accountants and of the New Jersey Society of Certified Public Accountants and has held other offices in these societies.

[fol. 814] He is a member of the National Association of Cost Accountants, a member of the Accountants' Club of America, a member of the American Accounting Association and an associate member of the American Institute of Mining and Metallurgical Engineers and a director of the Arbitration Association of America.

He was a member of the Executive Committee of the International Congress on Accounting held in New York in 1929 and was a delegate to the International Congress on Accounting held in London in 1933.

He has been a consultant to the War Production Board, to the U. S. Navy Department, a member of the Accounting Policy Committee of Fiscal Buget and Accounting Task Force of the Commission on Organization of the Executive Branch of the Government (Hoover Commission) and was in charge of a special mission for the United States and British Combined Chiefs of Staff in Europe.

He is the author of "Audit Working Papers" and has been a contributor to the Journal of Accountancy, the bulletins of the National Association of Cost Accountants and other accounting and business publications.

[fol. 815]

MAURICE E. PELOUBET

PUBLICATIONS

Books	*Published by*	*Date*
Explanation of Principles for Determination of Costs under Government Contracts—War Department—Navy Department Co-author with Eric A. Camman	U. S. Government Printing Office	April 1942
Accountants' Handbook by Paton (Associate Editor)	Ronald Press	1943
Audit Working Papers	American Institute Publishing Company	1937
Revised Edition	McGraw-Hill Book Co., Inc.	1949
A General Survey of Cost Accounting, Its Problems and Setting—Chapter I	D. Van Nostrand Company, Inc. in Handbook of Cost Accounting Methods, J. K. Lasser, Editor	September 1948
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[fol. 816]

MAURICE E. PELOUBET

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Is value an accounting concept?	Journal of Accountancy	March	1935
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MAURICE E. PELOUBET

SPEAKING ENGAGEMENTS BEFORE N.A.C.A. CHAPTERS AND NATIONAL AND REGIONAL CONFERENCES

Subject	*Chapter*	*City or Occasion*	*Date*
The Effect of Inflation on the Capital Structure of the Balance Sheet	New Haven	New Haven, Conn.	Sept. 25, 1934
Special Problems in Accounting for Capital Assets	Newark	Newark, N.J.	Jan. 17, 1936
	Providence	Prividence, R.I.	Jan. 20, 1936
Valuation of Natural Resource Assets	New York	Columbia University Acctg. Seminar	Apr. 28, 1936
Present Day Problems in Inventory Valuation		17th International Cost Conference, Cincinnati, Ohio	June 24, 1936
Depreciation and Obsolescence	Newark	Newark, N.J.	Nov. 19, 1936
Present Day Problems in Inventory Valuation	Reading	Reading, Pa.	Nov. 20, 1936
	Newark	Newark, N.J.	Jan. 28, 1937
Inventory Methods	Utica	Utica, N.Y.	Mar. 15, 1937
Inventory Valuations	Hartford	Hartford, Conn.	Nov. 16, 1937
	Minneapolis	Minneapolis, Minn.	Dec. 13, 1937
[fol. 822]			
Current Problems of Inventory Valuation	Rockford	Rockford, Ill.	Dec. 16, 1937

SPEAKING ENGAGEMENTS—Cont'd

Subject	*Chapter*	*City or Occasion*	*Date*
Preparation and Use of Accounting Statements	Reading	Reading, Pa.	Jan. 21, 1938
Problems of Present Day Inventory Valuation	Allentown	Allentown, Pa.	Feb. 25, 1938
The Relation of Inventories to Income—Taxable and Corporate	Worchester	Worchester, Mass.	Nov. 17, 1938
Costing the physical inventory and its relation to the 1938 Income Tax Law	Baltimore	Baltimore, Md.	Mar. 21, 1939
Process Inventories—The Corporate and the tax problem	Milwaukee	Milwaukee, Wis.	Nov. 20, 1939
What the management should expect from an accounting system	Dayton Indianapolis	Dayton, Ohio Indianapolis, Ind.	Dec. 12, 1939 Dec. 13, 1939
The Inventory Problem	Cincinnati	Cincinnati, Ohio	Dec. 14, 1939
Costing the physical Inventory and its relation to income taxes	Lehigh Valley	Bethelhem, Pa.	Mar. 28, 1940
What we can reasonably expect from the extension of procedure in the audit of inventories	Louisville Philadelphia	Louisville Philadelphia, Pa.	Sept. 17, 1940 Jan. 16, 1941
The Accountant and National Defense	Muskegon	Muskegon, Mich.	Nov. 4, 1941
Your Own Cost System and National Defense	Pittsburg	Pittsburg, Pa.	Dec. 17, 1941
Trends in Accepted Accounting Principles and their relation to Cost Accounting	Newark	Newark, N.J.	Jan. 22, 1942

[fol. 823] Q. Mr. Peloubet, were you in court on Tuesday when Doctor Johnston, from S. M. U. testified as an expert, called by Safeway Company?

A. Yes, sir.

Q. Were you sitting in that part of the court room where you could hear what he had to say?

A. Yes, I heard him clearly.

Q. Did you hear him expound the theory of practicing customer discounts allowed?

A. Yes.

Q. Do you agree with that theory?

A. No.

Q. Will you state your reasons for not agreeing with that theory?

* * * * * * *

[fol. 825] Q. Now will you state why you do not agree with Doctor Johnston's theory that price is the amount paid by the customer, regardless of any discount?

A. Well, principally because most transactions are made up of two elements,—price, and terms. We cannot determine the price without,—or rather can't determine the price which is to be constantly modified by terms,—by what the customer does,—but what the purchaser does. We start with a price.

Q. The price then, is a phase of what?

[fol. 826] A. I would say that in the accounting business it is,—we have a price,—we can have a cash discount from the price,—we can sell at the price,—we can charge an additional sales charge, or interest if the price is not paid promptly. There are a number of modifications, but the price remains the same.

Q. All right; now if a grocer offers an item for $1.00, and he marks $1.00 on the package that sets on the shelf,—what is the price of that item?

A. The price is $1.00.

Q. If the grocer offers that item marked $1.00, and at the same time offers a discount of three per cent for the payment of cash, what is the price of that item when a purchaser pays for it in cash?

* * * * * * *

By Mr. Crowe:

Question: Mr. Peloubet, is it a fact that cash discounts are not known at the retail level, from the retailer to the consumer?

By the Witness:

Answer: That is not a fact, no.

[fol. 827] Q. Outside of trading stamps, isn't it a fact that regardless of what they are, that you know of no instances of cash discounts, true discount for cash, given by a retailer to a consumer?

A. No, that is not true; I do know of cases.

Q. You do know of such?

A. Yes.

* * * * * * *

By Mr. Lane (Resuming examination):

Question: Mr. Peloubet, let me see that card that you showed me just a moment ago. Do you have that card with you, from an Oklahoma City retailer, showing the cash [fol. 828] and credit terms of that retailer?

A. Yes.

Q. Will you produce it, please. (Witness hands counsel an instrument).

* * * * * * *

Q. I was asking you, Mr. Peloubet, and you recall Mr. Crowe intervened, whether, when an item is priced at $1.00 and three per cent discount is allowed for cash, the price is 97¢, is it?

A. No, sir, the price is $1.00.

[fol. 829] Q. When that same item is purchased, not for cash, but is charged and paid for in thirty days, what is the price?

A. $1.00.

Q. When the account becomes over-due and there is a carrying charge for interest, what is the price?

A. It is still $1.00.

Q. And did you hear Doctor Johnston expound the theory that under such circumstances the prices would be 97¢, $1.00, and $1.03, depending upon the time of payment?

A. Yes, I heard him say that.

Q. Do you agree with that theory?

A. No, I don't.

Q. Did you hear Doctor Johnston expound the theory that price discounts, like trade discounts, reduce the price?

A. Yes, I heard him say that.

Q. Do you agree with that theory?

A. No, there is no basic resemblance between the two types of discount.

Q. What is the functional distinction between trade discounts and cash discounts?

A. Trade discounts are a method of changing the price, and they are what we might call a unilateral device, that is, the seller determines what the trade discount will be. He may determine it after a bargain, but he determines [fol. 830] it, and there is no question when a thing is sold, you get the trade discount.

Q. No matter when you pay for it?

A. No matter when you pay for it. Now a cash discount is offered by the seller, and it can or cannot be accepted by the purchaser. The purchaser has the option. That is one of the distinguishing characteristics, and the other distinguishing characteristic is, as I said, the trade discount is unilateral,—the cash discount is a two-sided affair,—the seller gives the discount,—the purchaser performs the service by making a prompt payment. You have a quid pro quo.

Q. Is it then,—would it be a fair summary to say that the purpose of the trade discount is to adjust the price, and the purpose of the discount for cash is to effect the sale?

A. That is correct.

Q. That is the difference between trade discounts and cash discounts in a nut shell?

A. That is correct.

* * * * * * *

[fol. 831] Q. Is the distinction which you have indicated between trade discounts and cash discounts one which has long been recognized in accountancy?

* * * * * * *

A. Well, I can remember when I first started to study accounting in 1911, the rules were just the same then as they are now.

Q. And they are what?

A. That there is a distinction between cash discount and trade discount, and that cash discount is a financial transaction, and trade discount is a modification of price. There have been changes in the application, but there has been no changes in the essence, or principle.

Q. Where a discount is given for the payment of cash, are there various ways in which that discount can be recorded on the operating statement of the merchant, the person who allows the discount?

A. I didn't get the beginning of that question.

Q. Where a discount is offered for the payment of cash by a retail merchant, are there various ways in which that discount can be recorded on his operating statement?

A. Yes, sir, there are.

Q. What ways, Mr. Peloubet?

A. It can be recorded as a financial expense, or it can be recorded as a deduction from gross sales. Both methods are permissible.

Q. Did you hear Doctor Johnston expound the theory that when trading stamps are given with merchandise, a tied-sale results?

A. Yes, I heard that.

Q. Do you agree with that theory?

[fol. 833] A. I do not.

Q. What is your conception of a tied-sale?

A. Well, a tied-sale,—there is really two kinds,—one is where you give eleven packages for the price of ten, and we say the eleventh package is tied in, or you might have a two cent sale in a drug store,—you buy one item for a dollar and an identical item for an additional two cents. And then there is another type of tied-sale that we are so familiar with. Right after the war, when liquor dealers who couldn't get desirable liquors, like scotch and bourbon, —they were forced to take rum, and coniac, and various brandies, and all sorts of things like that, in order to get the liquor that they wanted. Those are two examples that I can think of, but the tied-sale is not an uncommon device.

Q. Let me draw your attention to the kind of an example that Doctor Johnston gave under examination; would you consider that the sale of a package of Parade detergent with a second package tied in for the price of one, as a tied-sale?

A. Yes.

Q. Would you consider the sale of a package of Parade detergent at the price appropriate for pricing it,—a package of Parade detergent and three sticks of gum tied in with that for no extra charge as a tied-sale?

A. Yes, I think it would be.

[fol. 834] Q. Well would you consider the sale of a package of Parade detergent at the minimum mark-up, which lets say is $1.00,—lets, for the sake of argument assume that the cost on the package of Parade below which the retailer can't go is $1.00; would you consider a sale of a package of Parade detergent for $1.00 with three pennies taped onto it by scotch tape as a tied-sale of the Parade and the pennies?

A. No.

Q. Would you consider the sale of a package of Parade under those circumstances, without the pennies, but with three cash-saver coupons worth a penny apiece as a tied-sale of the Parade and the cash-saver coupons?

A. No, that would not be a tied-sale.

Q. Assuming in that question that the cash-saver coupons are redeemable, can be converted into cash,—you so understood it?

A. Yes, I understood that was what they are.

Q. Would it make a difference in your answer if instead of cash-saver coupons they were trading stamps, redeemable in merchandise?

A. No, it would make no difference.

Q. So that what we are concerned with, then, in this law suit, when we talk about the sale of a package of Parade at the minimum mark-up, with three trading stamps, or three cash-saver coupons, or three pennies attached is [fol. 835] whether that cuts the price, not whether it is a tied-sale?

. . . . . .

A. Well what was that question?

Q. I will put it to you again; so that when, in this law suit, we are considering the legal effect,—let me withdraw that,—not the legal effect,—when we are considering the subsequent result of the sale of a package of Parade at the minimum mark-up, accompanied either by three pennies in cash, or by three cash-saver coupons worth three pennies, or by trading stamps worth three cents in merchandise, we are dealing with the question of whether it is or is not a price cut, not whether it is or is not a tied-sale?

A. I think that is right.

. . . . . .

[fol. 836] A. I do not think it is a tied-sale, because some of the principle elements of a tied-sale are absent.

Q. Did you hear Doctor Johnston expound the theory that when trading stamps are given with merchandise purchased for cash, a cash discount does not result?

A. Yes, I heard that.

Q. Well let me simplify it; wasn't Doctor Johnston's theory that trading stamps are not a means of giving cash discount?

A. That is what I understood from his testimony.

Q. Do you agree with that theory?

A. No, I don't.

Q. Do you remember some of the reasons that he assigned for his statement that cash discounts,—trading [fol. 837] trading stamps are not a means of giving a discount for cash,—do you remember some of the reasons he assigned?

A. Yes,—now you said in the question, 'cash discount',—did you mean trading stamps? I think you meant to say trading stamps.

Q. Yes, I beg your pardon; do you remember some of the reasons he assigned?

A. I think I remember some of his reasons; he said—

Q. Well let me see if we can't get into it; in the first place, Mr. Peloubet, where the purpose is to give a discount for the payment of cash,—lets assume a three per cent discount,—is there any means by which you know that that discount can be given on a purchase of thirty cents or less, and give the discount in money?

. . . . . .

[fol. 838] Q. One of the reasons that I recall, Mr. Peloubet, assigned by Doctor Johnston for his statement that there was no such thing as a discount for cash at the retail level was because in his experience he didn't know of such a practice?

A. Yes, I heard that; I was supprised to hear it.

Q. Have you ever heard of a discount for cash at the [fol. 839] retail level?

A. Yes, sir.

Q. Is that something you have heard of recently?

A. No,—no, I think it has been going on for a long time.

Q. Do you remember that Doctor Johnston said that he made a search for any accounting authority that acknowledged the existence of cash at the retail level and that he hadn't been able to find anything at S. M. U.?

A. I heard him say that, yes.

Q. Well let me show you a book which we obtained from the Oklahoma University Library this morning.

By Mr. Swinford:

Now if the Court please, we will object to the use of text books, as indicated by the question. We have some authorities on that, if the Court please, and I suppose we had just as well present it now.

By Mr. Lane:

It seems to me, your Honor, that they opened the door to this, directly themselves, when Doctor Johnston testified on direct examination that he had made a search and that there was no written evidence, or works on it.

* * * * * * *

[fol. 840] By the Court:

And as I understood Doctor Johnston's testimony, he said he had searched everywhere and there were none. Now they come forward and say there are such books, and want to show that there are, but that is as far as [fol. 841] they are going. That is the way I understand it.

By Mr. Swinford:

Well I don't think that is as far as they will go, but go ahead.

By Mr. Lane:

Well that is where I began. I then will ask the Court to receive in evidence Page 52 of the paragraph beginning in solid caps,—"Cash, Credit, Stamps, and other Discount Methods", of a book entitled 'Retail Credit Practice', by John P. Bartlett, Specialist in Business Research; Manager, Bartlett Service; Secretary, National Association of Business Writers, and Charles M. Reed, General Manager, Retail Credit Men's Association, Denver; Lecturer on Credit Management, University of Denver; Former Director, National Retail Credit Association. Published by Harper & Brothers in 1929.

Now we request permission to have this deemed marked in evidence, since it is a book that I want to return to the Oklahoma University Library without defacing it.

[fol. 842]

* * * * * * *

By the Court:

Well you are not offering what is in that book, the whole book?

By Mr. Lane:

No, sir, not the whole book, but I am offering this portion of it to show that Doctor Johnston was incorrect, and further, that in fact a discount for cash at the retail level is here treated in a text book.

By the Court:

Very well, I will consider it for that purpose.

By Mr. Swinford:

In other words, he is offering the contents of the book.

[fol. 843] By Mr. Lane:

No, I am not offering it for the contents, nor for the truth of what the author says, but for the purpose of showing that it contains a literal treatment on the subject.

By the Court:

Well the way I understand it, Doctor Johnston said he had searched everywhere and there was nothing on it, and they are offering now to show that it is a book from the library and anybody can go get it.

By Mr. Lane:

Now they say you can get it, your Honor, in about twenty minutes, just by picking up the phone and calling the Oklahoma University Library.

By the Court:

And it is offered for that purpose only?

By Mr. Lane:

Yes, that is right; and for the same purpose, your Honor, I also offer Page 99, the last full paragraph on [fol. 844] that page, of a book entitled 'Principles of Retail Merchandising', by Harold A. Baker, Phd., Assistant Professor of Marketing, School of Business Administration, Miami University, Oxford, Ohio, Lecturer on Retailing, Evening College, University of Cincinnati, and running from the point of beginning that I have indicated down to the paragraph beginning quote, "The trade discount is a deduction in price" and unquote,—let me finish that sentence,—Quote; "The Trade discount is a deduction in price—

By Mr. Swinford:

We object to it as being incompetent; the book is not in evidence, your Honor.

* * * * * * *

[fol. 845] By the Court:

* * * * * * *

That part of this book, or citation, or whatever you want to call it, will be admitted under the same condition that the other was.

By Mr. Lane:

Yes, sir, to show that there is accounting literature thoroughly discussing discounts for cash at the retail level.

By the Court:

And that is for the purpose of impeaching Doctor Johnston's testimony, as I understand it,—not for what is contained in the article.

By Mr. Lane:

No, no, I am not trying to prove what the man said in his book is correct or incorrect, but he can express his opinion as to what he said about it.

[fol. 846] By the Court:

Very well; proceed.

Q. Mr. Peloubet, did you also hear Doctor Johnston expound the theory that the cost of trading stamps, or rather the use of trading stamps, I believe, could not be classified as a form of advertising?

A. Yes, I heard that too.

* * * * * * *

Q. Mr. Peloubet, where, in the operating statement of the retailer, is advertising customarily recorded as an expense?

A. It is generally recorded in the group of expenses that you would call cost of doing business. You have the cost of merchandise, and you have the cost of doing business.

Q. Do you classify advertising as a promotional expense?

[fol. 847] A. Yes, I think the terms are almost synonymous.

Q. Is it proper, or improper, to classify trading stamps as a promotional expense?

A. I think it would be a proper classification.

* * * * * * *

Cross examination.

By Mr. Swinford:

Question: Mr. Peloubet, I will first ask you if a cash discount at the retail level isn't indeed very rare?

By the Witness:

Answer: I don't think it is.

Q. You don't think it is rare?

A. No.

Q. I will ask you if you didn't say,—if you didn't testify,—you did testify, did you not, in the case of Standard Stores versus Safeway Stores in the District Court of the City and County of Denver, which was completed in 1955, in June?

A. That is correct, yes.

Q. I will ask you if the following question wasn't asked you,—"Question: Now in your experience, other than the use of stamps, is there any offer of a cash discount made by the retailer to his customer?,—Answer: I wouldn't say it is never done, but it is very unusual and I don't recollect [fol. 848] any instance";—was that question asked and that answer given by you during that case?

A. I am just trying to go back in my mind on that—

Q. Well first, do you agree that that is the question and answer?

A. Oh yes, there isn't any question but that it is in the testimony; I was just trying to think—

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[fol. 850] Q. Well very well, Mr. Peloubet, what is your explanation?

A. Well, as I say, I am trying to remember back, and I think,—I believe that we were talking about,—I think we were talking about retailers,—small retailers, that sold in small amounts, like grocers,—I believe we were talking about grocers, and I don't think that answer was meant to cover,—say fields like department stores, implement dealers, and hardware stores, and that sort of thing,—that is my present recollection of it. I would like to see the testimony again, to make it perfectly clear, but that is my present recollection.

Q. Well yes, now in that frame of reference, that is, so far as sales of retail grocers is concerned, your answer would still be the same?

A. Absolutely.

Q. You don't know of any retail grocers who offer cash discounts?

A. Not in money, no,—I think that is unusual, yes.

Q. Again, at page 3175 in the record of the same case at Denver, the question was, "Well, I am talking about levels of distribution now, and I am not referring to,—Answer: Oh, well, it is common. Question: Wholesale as opposed to manufacturers? Answer: It is common at all levels of distribution above the retail level". Was that ques-
[fol. 851] tion asked and that answer given by you during that case?

A. That sounds like it.

Q. All right, it is correct then?

A. Yes, sir.

Q. It is?

A. Yes, that is correct, certainly; you have read the question and the answer.

Q. Now Mr. Peloubet, you don't purport to be an economist, am I right about that,—you are not an economist?

A. No,—I have a certain amount of contact with them, and I work with them on occasions,—I work with them on investigations, but I have no qualifications as an economist.

Q. How long have you been with the S. & H. Company?

A. I am not with them.

Q. Aren't you their auditor?

A. No.

Q. Then all you do is testify for them?

A. I have occasionally testified for them, yes.

Q. In what case?

A. Well, I was in the Margetts case, in New Jersey, and the Hoyt case, in Des Moines, and the case at Denver.

Q. And now this one?

A. And this one.

[fol. 852] Q. Extending over a period of practically five years?

A. Something like that, yes.

Q. And in every case you have testified to the same subject matter, namely, that in your opinion trading stamps is a cash discount and cash discounts do not reduce prices, is that it?

A. Yes, that is correct, I have always testified that way.

Q. And by whom are you being employed to testify?

A. By Sperry and Hutchinson.

Q. But to that extent you have worked for them for a period of about five years in the capacity in which you appear here today?

A. That is correct, yes.

Q. Do accountants always follow good economic principles?

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A. Well I suppose you would be so careful as to disqualify me as an economist,—that I ought not to answer it.

Q. Well all right, I will withdraw the question.

A. Well I would be glad to try to answer it, but it would [fol. 853] seem kind of funny after your disqualification of me.

Q. Are there occasions, Mr. Peloubet, in your best thinking, as an accountant, when you handle the records of your clients one way or the other for the purpose of convenience, or one way or another because your client wants them handled that way?

A. Well, I think that there are many cases where you have two or three,—possibly,—alternatives, permissible methods, and there are generally reasons for using one or the other, and if your client has a reason that seems adequate to him, to use a method which is permissable, why you go along with him. If you feel that it is bad for his business, or dangerous, why you advise him so, but as a general rule a client is entitled to use a permissible method, yes, that is true.

Q. And those availables, that is, two choices that perhaps you would say he might use, might produce an entirely different result, might they not, and still be perfectly proper alternatives?

A. Oh, they might; I think inventory methods are an example of that. You can get wide fluctuations in profits, wide fluctuations in asset valuations,—there is nothing unusual in that.

Q. Yes,—will you tell us, Mr. Peloubet, what the word 'price' means to you?

[fol. 854] A. What the word 'price' means?

Q. Yes, sir.

A. Well, 'price' means,—basically,—it means to me a

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quoted or established price, like the price of copper is so much a pound, and the price of cotton is so much, and the price of an automobile f.o.b. Detroit is so much,—it is a fixed, quoted, established figure at which an article can be purchased.

Q. And what is 'list price'?

A. Well, 'list price' is a price which a manufacturer sets, as a matter,—sometimes merely as a matter of convenience. It is not always the price which the manufacturer expects to get,—it is a price which may be varied with different types of customers.

Q. Well when you think of 'price', don't you think of the list price?

A. Not necessarily,—no.

Q. How do you distinguish between the two?

A. Well, I know we have a client in the wholesale stationery business,—I am trying to give you an example, I think it is easier that way,—we have a client in the wholesale stationery business; they get out a catalogue about once every three years. It is too expensive to do it any oftener, and they put list prices in it, but never sell at the list price, because the market goes up and down, and things change, and they say, in certain sections, ten per cent off, [fol. 855] and in certain sections twenty per cent off, and occasionally something is over, but that is my idea of a list price,—it is a convenient thing.

Q. And what is a 'shelf price'?

A. A 'shelf price'?

Q. Yes?

A. A 'shelf price', as I understand it, is the price at which goods are marked at retail, in the retail store.

Q. Do you look upon those as being the true prices,—the shelf price?

A. I think in most cases it would be.

Q. Yes,—I am just trying to find out where you are on price,—when you say 'price', you mean the shelf price of the merchant, is that correct?

A. Yes, that corresponds with what you say would be a quoted price of the commodity, and not in the market,—it is the merchant's quoted price.

Q. Well what about the advertised price,—is that the same as the shelf price?

A. Well, it could be,—I should think it would be a hard way to run your business if it wasn't.

Q. Is there any difference in your concept between the cost to the customer and the amount which the seller receives,—must those two things always be the same?

A. Well of course that gets unto the rather difficult field [fol. 856] of the definition of cost.

Q. Well I am talking about prices,—the price?

A. Well, it just depends; if you have an article on the shelf that is marked at a dollar and your customer pays a dollar for it, it costs him a dollar. Now, if you have the same article and the Company,—well lets take something a little more substantial,—say it is an appliance worth $100.00; now his shelf price is still priced at $100.00, but he offers a cash discount, and he offers credit terms, and he will charge you a premium or penalty if you go over the terms. Now in that case I would say that the price is always $100.00, and you may pay $98.00,—you may pay $104.00,—but you are paying for different things. You have got a mixed transaction, and services, in price,—you have—

Q. Yes, Mr. Peloubet, just a minute now,—you stated that on direct examination; now this is cross examination. I am asking you one simple question, and just answer it "yes" or "no"; is the amount that is paid by the customer for the purchase of an article always the same as the amount received by the merchant for that article,—just answer it "yes" or "no"?

A. I can't answer that "yes" or "no", because the question is so ambiguous; if you would leave out 'for the purchase of the article', I could answer it. If you would say, 'Is the amount paid by the customer the cost', then I would [fol. 857] say not necessarily.

Q. Well I am not talking about cost, Mr. Peloubet,—I am talking about price.

A. Price,—well,—

Q. Well let me try this one,—

A. All right, go ahead.

Q. —is the price that the purchaser pays for a dollar's worth of groceries always the amount in money, the same amount in money, as the merchant receives?

A. In money?

Q. In money?

A. Not necessarily, no.

Q. Not necessarily; all right, lets just stop right there. Mr. Peloubet, suppose that you purchased a business from me, and included in the business assets were $200,000.00 worth of inventories, and according to your purchase agreement you agreed to pay for that inventory seventy-five cents on the dollar of the price of merchandise to me. On the date you and I made the contract, one-half of the inventory that you are purchasing from me was purchased by me for $100,000.00, and I paid $100,000.00 for it; the other half of the inventory, which was equivalent of $100,000.00 worth of merchandise, I had purchased from a wholesaler who sold it to me with a cash discount privilege. Now on half of that I had taken the cash discount, or in other words, I had not paid $100,000.00 for half of the [fol. 858] merchandise because I had received two per cent discount, and that would be about $2,000.00,—

A. $2,000.00, yes.

Q. Now, under those circumstances, what would the price of the entire inventory be to me?

A. I think the price would be $200,000.00. I certainly think a feature like that ought to be covered in the sales contract.

Q. Yes,—you would then be willing to pay me $200,000.00?

A. I would pay what the contract said, but I say, I wouldn't allow a client of mine to enter into a contract as ambiguous as that.

Q. Well don't argue with me.

A. Well I am not, I am trying to understand it.

Q. Well all right, you feel that if you made that kind of a contract with me, ill-advised as it might be, that you would be obligated to pay me on the basis of $200,000.00 in inventory, notwithstanding that the price or the cost to me was only $198,000.00?

A. If I was selling that inventory I certainly would insist on it.

Q. I see; Mr. Peloubet, what is the value, in your opinion, of the S. & H. Stamps?

A. Do you mean as a device, or in money, or what?

Q. In money?

[fol. 859] A. Well,—now that depends,—

Q. Percentage-wise?

A. Well I understand it is something in the neighborhood of two and one-half percent, or perhaps a little more.

By Mr. Lane:

That is the value to the housewife.

A. Yes, that is the value to the housewife, redeemable in merchandise.

Q. Do you think, Mr. Peloubet, that in the ordinary stamp transaction that the stamps are probably a consideration of the contract of the sale, as opposed to a part of the price of the sale?

A. Well I think if you want to really analyze it, you have got two transactions,—

Q. Well now just wait a minute,—I asked you a question, and if you can answer it "yes" or "no", just answer it "yes" or "no"; first, answer it, and then I will let you explain it.

A. Well all right,—what was the question again?

Q. Are the stamps a part of the consideration of a contract of sale between a customer and a merchant when the customer is buying groceries?

A. No.

Q. They are not a part of the consideration?

A. Of the contract of sale;—no.

[fol. 860] Q. They are not?

A. No.

Q. All right; now when the customer goes into a stamp store,—we will say Mr. Miskovsky's store, and buys ten pounds of sugar at the shelf price of $1.00, and receives also trading stamps which are, according to your computation, worth two and one-half cents, has the customer received more than the one thing?

A. Oh, yes, sir.

Q. And the customer,—has the customer received both the sugar and the stamps?

A. There is no question about that.

Q. And if you assume that the stamps are worth two

and one-half cents, what is the value of the sugar, or the price of the sugar?

A. The price of the sugar is $1.00.

Q. What does it cost the customer to buy it?

A. It costs the customer $1.00.

Q. And what do you do with the other two and one-half cents?

A. The other two and one-half cents is a different transaction; the other two and one-half cents,—now mind you, of course, this is rather finely analyzed,—

Q. Yes,—I can see that it is.

A. —but we have to do it that way,—the other two and one-half cents is a financial transaction between the cus- [fol. 861] tomer and the store. They are for convenience, but that is what it is.

Q. Well let me put it this way, Mr. Peloubet; let's say that you live in this town and your wife desires to buy a chair and a particular lamp to set beside the chair. They are both fair-traded items. The chair, itself, is fair-traded at $120.00. She wants to buy, to go with it, a lamp that is worth $3.00. Now Brown's Department Store, which is our largest department store here, happens to be a distributor of S. & H. Stamps, and also a redemption center, and she finds that by going down there to the redemption center, she finds the identical lamp, as a premium, that she wants to buy, and she can buy it with one book of stamps. So she finds that she can go to Brown's and buy it,—of course she could go to Harbour-Longmire and buy it, who do not give stamps, and the chair would still cost her $120.00 and the lamp would cost her $3.00.

Now, how much does that merchandise cost her if she buys it at Brown's?

A. The chair costs her $120.00. She makes a financial transaction with Brown's by paying cash,—she renders a service to Brown's and Brown's politely pays her for the service with a book of stamps worth $3.00, which she then takes and goes into another transaction and redeems the lamp. I am speaking strictly from hearsay, but I understand that Brown's is a credit store, as well as a cash [fol. 862] store, so that if she hadn't paid the cash she would not have had the book of stamps, so I think that is

an excellent example. I think that is a very clear example of your double transaction,—it happened to be a tripple transaction in that case.

Q. Well supposing, Mr. Peloubet, she pays cash at both stores?

A. Yes,—

Q. When she leaves Brown's she has got to leave $120.00 with them and she receives both the chair and the lamp, doesn't she?

A. That is another effect of all the transactions.

Q. Yes, and if she goes to Harbour-Longmire $120.00 would only buy the chair,—won't it?

A. Well may I ask—

Q. Well now wait a minute,—answer my question first.

A. I can't answer it until I have made a comparrison of the two stores; is Harbour-Longmire a store which extends credit?

A. Both of them are doing a strictly cash business. The matter of credit is not involved.

A. Oh, well I was misinformed,—I was misinformed,—I understood Brown's did a credit business.

Q. Well I am not talking about what they actually do,—I am talking about a hypothetical case; all I want to do [fol. 863] is to have those two stores on the same basis.

A. Well, one of them offers to go through a financial transaction,—one of them offers to enter into a financial transaction, and the other one don't. Now she has her choice.

Q. Yes,—all, right,—

A. She has her choice,—certainly she can go to the one that doesn't offer to go through this mutually advantageous transaction, and she doesn't go there. That is just a matter of free business choice.

Q. Yes,—so the net result is that she gets both articles for $120.00 at Brown's, and she can only get the chair at Harbour-Longmire,—right?

A. If that is the hypothesis, you are right.

Q. Yes,—or she can get the chair and the lamp both at Brown's for $120.00, and if she insists upon both articles, of course, they will cost her $123.00 at Harbour-Longmire, —is that correct?

A. Yes,—well now, Harbour-Longmire is getting something for nothing.

Q. All right, I will ask you, Mr. Peloubet, whether when a customer does business with one of S. & H.'s licensees, they buy cheaper than they would otherwise be able to buy,—is that right?

A. I have no basis for answering that question; I have no knowledge of that.

[fol. 864] Q. Well I will give you the hypothesis on which you can predicate your answer. Assume that two stores are both selling sugar of the same brand, the same quantity of sugar for $1.00. One of them gives S. & H. stamps, the other one does not. Does the customer buy it cheaper by doing business with the stamp merchant?

A. I don't think you can say they buy it cheaper, they get an additional benefit, but they don't buy cheaper.

Q. You have studied, have you not, some of the history of the S. & H. Stamp Company, and their advertisements, and their contracts?

A. Yes, to some extent.

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[fol. 867] Q. Mr. Peloubet, does a customer, by trading with a stamp merchant, under the same hypothesis,—same sugar,—same shelf price,—effect a savings?

A. They get a benefit from entering into a mutual advantageous contract.

Q. I didn't ask you about a benefit, Mr. Peloubet,—I say, do they effect a savings?

A. Well I am not quite sure what you mean by 'savings'.

Q. Well what does the word 'savings' mean?

A. Well, savings, I think, means putting aside something that you already have.

Q. Yes, but if you make a purchase and effect a savings, what do you mean,—you mean that you bought it for less, [fol. 868] don't you?

A. Yes.

Q. All right, now does a customer effect a savings by trading with a stamp merchant?

A. Within that definition, I would say no.

Q. You would say no,—you did testify in that Margetts case, didn't you?

A. Yes.

Q. Isn't that statement made to the Court in the Margetts case?

A. What statement?

Q. That the customer effects a savings by trading with a stamp merchant?

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Q. Now it is your theory, Mr. Peloubet, that the stamps, —the S. & H. trading stamp, is near money, is that correct?

A. It performs generally as such, as subsiduary coins, yes,—as a substitute.

Q. You have a wide selection of premiums, including some of the necessities of life, and something that we all use, [fol. 869] that are obtained by the stamps, and as long as S. & H. are solvent you can buy these utilitarian articles from them with the stamps, is that correct?

A. That is right.

Q. Now assume that fact, that it is such a legal tender problem that it is near money,—is there any difference, in your opinion, between Miskovsky's, we will say, which is an all cash grocery, and Safeway, which is an all cash grocery,—would there be any difference between Mr. Miskovsky giving trading stamps worth two and one-half cents, and—

By Mr. Watts:

Two and one-half cents on the dollar.

Q. —all right, trading stamps worth two and one-half cents on the dollar, and Safeway merely handing back two and one-half cents on the dollar to its customers?

A. I don't think there would be any difference, if it could be done.

Q. Yes,—and would there be any difference between handing back two and one-half cents on the dollar purchase and in merely netting it off by reducing the price?

A. Yes, there would be a great difference.

Q. There would,—now what makes that difference?

A. There is a substantial difference there; now I think what makes that difference is this,—if we have two comparable stores,—two stores comparable in every other way,

[fol. 870] and one of them does a cash and credit business and one does only a cash business,—

Q. No, I am not talking about that,—I am talking about the hypothesis of two cash stores, don't you see,—Miskovsky and Safeway,—both of them are cash stores,—you can't get any credit.

A. Yes,—

Q. Now Safeway,—you said it would be all right for them, on the other hand, if the purchaser bought $1.00 worth of sugar, to give the customer two pennies, tapped on with scotch tape,—that that would be all right?

A. Yes, if it could be done.

Q. Yes,—supposing Safeway advertised on a given week-end that "this is our anniversary sale, and for our customers who buy sugar from us, we are going to give you a two per cent discount"; then the $1.00 sugar is placed on the shelf at 98¢; what is the price?

A. Well I think,—may I get one little clarification in there?

Q. Yes, sir.

A. This two per cent,—is this two per cent across the board in Safeway,—on every item?

Q. Oh, sure,—yes, sir.

A. It is on every item?—then if it is on every item, then you are in a cash discount business the same as Miskovsky.

[fol. 871] Q. That would be all right?

A. Yes, if it wasn't across the board why then of course it would be a price reduction.

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Q. Now of course, trading stamps are not money, are they?

A. Certainly not; they would be illegal if they were.

Q. And to that extent, they could only be simulated to money?— That is, they only resemble money?

A. They have some other characteristics, yes.

Q. And what are the other characteristics; are they somewhat like the property which they can be used to purchase?

A. Well, I think the difference between them,—trading

stamps are a good deal like certain types of money,—take Brazilian money for instance,—there are certain types of Brazilian money that can be used to buy certain things. [fol. 872] In Brazil you have merchandise, and here is a certain kind of money that you can use for this purpose, and here is a kind of money that you can use for another purpose, to buy something else.

Q. You are not answering my question.

A. Well I am just trying to give you an example.

Q. Well I appreciate that, but we are in a hurry.

A. Well, all right?

Q. Are trading stamps similar to the premium which they will purchase?

A. No.

Q. How is that?

A. No.

Q. Well supposing,—take our question a while ago; supposing your wife has in mind saving her stamps,—I mean purchasing those two items, or articles, and she goes to town with $120.00. She goes to town with the faith and the knowledge that for $120,00 in the coin of the realm she can buy two articles, a chair and a table lamp, which match. Now why doesn't a book of stamps which Brown's hands her and she immediately walks across the room and gives to them at the redemption center and gets the lamp,—why doesn't that book of stamps amount to a warehouse receipt,—an order for the acquisition of that lamp?

A. Because they lack some of the essential qualities of a warehouse receipt. A warehouse receipt,—you know be- [fol. 873] fore hand, both parties know what a warehouse receipt covers, and they know it all the time. It isn't something that is variable according to options, and chance, and whim. I don't think there is any important resemblance there.

Q. You don't think it would be proper for the housewife to look upon the stamps as representing the article of merchandise that she was saving to obtain?

A. No, because, at least my experience with ladies is that their minds don't remain fixed over the period of time it takes to collect several books of stamps,—I don't know

when she will change her mind, and neither does anybody else.

Q. Is that in the auditing field, or accounting field?

A. I would say that was in the accounting field. You would be supprised how that enters into the accounting field.

Q. You can't buy the stamps by themselves, can you?

A. Not unless the retailer breaks his contract.

Q. All right, so in order to obtain the stamps, you have to buy some merchandise?

A. That is correct.

Q. And you say that that is not a tied-sale?

A. No, it isn't a tied-sale, because you are not buying an article.

Q. You are not buying an article,—you say it is not a [fol. 874] tied-sale because a stamp is not an article?

A. That is true.

Q. And that is the only reason you say it is not a tied-sale?

A. Well I never tried to think up any more reasons; I think that is a perfectly adequate one.

Q. Well if you are satisfied, I am too; I would sight you to the rule, however, that if you don't have a subject matter you can't have a sale, I would say.

. . . . . .

Q. All right; now I believe you did say that stamps are an expense,—cost to the merchant?

A. It is a cost, certainly.

Q. And it is certainly a benefit to the customer?

A. Certainly.

Q. Now the cash discount problem, Mr. Peloubet,—it is your opinion, as I understand it, that the cash discount does not affect the price?

A. No, by its very definition it can't.

Q. All right,—now from an accounting standpoint, how do you handle the cash discount at the wholesale level?

A. Now are you talking about where it is placed in the financial statements?

Q. Yes, that is what you are talking about, isn't it?

[fol. 875] A. Not necessarily.

Q. Well we are talking about accounting.

A. But there are many other accounting features,—you

have got your cost accounting, and you have got a whole lot of things in there, but if we are looking at financial statements, you have several choices where you put it.

Q. Well all right, where do you put it?

A. Well, it depends on the business,—it depends on what is appropriate. If you had a business where,—oh, say half of your customers took discounts and half didn't, I would say that it would be better to show your sales gross and show the discount as a financial expense. If you had a business where ninety-eight per cent of your customers took the discount, I think it might be a good idea to show your sales net; I think it is a question of how you are operating.

Q. To show your sales net?

A. Yes.

Q. All right, now tell the Court what that means?

A. Well, supposing you have $100,000.00 of sales, and lets say, for the sake of argument, they were all on a discount basis,—everybody takes a cash discount. I see no objection to showing that sales figure, that net sales or revenues, at $98,000.00.

Q. That is the wholesaler selling to the retailer?

[fol. 876] A. Well, it may be the manufacturer.

Q. Well I am going to take that hypothesis, the wholesaler selling to the retailer..

A. Yes, sir.

Q. Now how does the retailer put it upon his books?

A. It just depends,—if a retailer takes all of his discounts, or nearly all of his discounts, it is sometimes convenient to carry it through, and it is a little more conservative, in your inventory, to carry it through net, which is sometimes done. If you don't take all your discounts, it is better not to. If you take part of them,—if you take, say you take eighty per cent of your discounts, then you have got to have another account for discounts not taken. But anyhow, it depends on how your business is.

Q. But Mr. Peloubet, if the manufacturer sells Mr. Miskovsky,—or the wholesaler sells Mr. Miskovsky $1,000.00 worth of groceries under the method you have just described the wholesaler charges them out to him, not at $1,000.00, but $980.00, doesn't he?

A. No, he gives him an invoice that says $1,000.00 and two per cent discount if—

Q. No, now I am talking about his books; he only owes $980.00 on his books?

A. Who does?

Q. The wholesaler, when he sells to Mr. Miskovsky, he only shows that Miskovsky owes $980.00 on his books?

[fol. 877] A. Now you are getting into another realm of accounting.

Q. Well you just answer my question now.

A. Well I don't think he does.

Q. You don't?

A. No.

Q. Isn't it proper for him to do that?

A. It wouldn't be improper, but it would be unusual.

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A. It would be unusual to enter it in accounts receivable that way.

Q. But it would be proper?

A. Oh yes, I see no objection to it.

Q. All right, now, it would likewise be proper for Mr. Miskovsky's bookkeeper to enter the receipt of that merchandise at the cost of $980.00, wouldn't it?

A. I don't see that it would do any great damage if it [fol. 878] was done consistently.

Q. Yes, and if he did that that would be the price he paid for it; wouldn't it?

A. Oh, no,—no,—no.

Q. It wouldn't?

A. No, that is just an expedient,—that is just an accounting short-cut, of which we have many. There is no objections to accounting short-cuts, as long as they don't misrepresent. Now I don't think that misrepresents, but an accounting short-cut,—I mean we have many things like that,—the way some interest is handled, and all that, but an accounting short-cut does not change the essential nature of the thing.

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[fol. 879] Q. All right, Mr. Peloubet, the other way to handle this is for the wholesaler to enter on his books some entry that he made of a sale to Mr. Miskovsky for $1,000.00, isn't it, and for Mr. Miskovsky to pick up that as a purchase of $1,000.00?

A. That is right.

Q. And he allows a two per cent discount and Mr. Miskovsky takes the two per cent discount within the discount period?

A. That is right.

Q. And you have $20.00 that both parties are going to have to account for, don't you?

A. Yes,—sure.

Q. All right, so the wholesaler has to make another entry, and what does he do with that $20.00 that he doesn't get for that $1,000.00 worth of merchandise.

A. He charges 'discount allowed', and he credits Mr. Miskovsky.

[fol. 880] Q. Yes, sir,—

A. —which is a common every day entry.

Q. Yes, he charges himself, though, first, with $20.00, is that right?

A. Yes,—sure.

Q. All right, if he had sold that on credit he wouldn't have had that expense, would he?

A. No, of course not.

Q. Isn't it a little ridiculous, for the wholesaler to have a $20.00 expense for selling for cash to Miskovsky for cash when he would have no expense if he sold for credit?

A. I would say, to put it that way, it was pretty ridiculous, yes. But that isn't what it is.

Q. Well all right now, lets take the other end of the transaction; Mr. Miskovsky has picked up that purchase as $1,000.00 worth of merchandise?

A. Yes.

Q. And he doesn't pay $1,000.00; he only pays $980.00, doesn't he?

A. Assuming that he pays within the discount terms.

Q. Yes,—and what kind of an entry does he make?

A. He charges his inventory with $1,000.00, and then if he earns the discount he picks it up as a discount income.

Q. He picks it up as an income, doesn't he?

[fol. 881] A. Sure.

Q. Has Mr. Miskovsky made one dollar of income by purchasing that property?

A. No.

Q. He hasn't, has he?

A. No.

Q. And that is likewise a little ridiculous, isn't it?

A. Well, we are only considering—

Q. Well answer my question first.

A. All I can answer is that there is a sufficient accounting justification for it. I would be glad to tell you what it is, if you want me to.

Q. That is all I want to know,—I don't want to know your justification. Now you stated that the two per cent,—you look upon that as a financial transaction,—the transaction of a cash discount is a financial charge, is that right?

A. When it is allowed, yes.

Q. All right, what does two per cent necessarily compute at an annual basis?

A. I think the usual figure for that is around thirty-six per cent.

Q. Yes,—and that is a little high for the use of money, isn't it?

A. If it was only for the use of money, it would be very [fol. 882] high,—but it isn't.

Q. Now in order to stay in a business as highly competitive as the retail grocery business is in Oklahoma City today, the merchant must take his cash discount, mustn't he?

A. Well, it is sound commercially,—financially, yes.

* * * * * * *

[fol. 883] Q. All right, now Mr. Peloubet, you don't claim, at least as far as the retail grocery business is concerned, that there is any history of the cash discount except the trading stamps, do you?

A. Not to any great extent, no.

Q. All right, so you have simulated the cash discount, as it exists at the wholesale or the manufacturer's level,—isn't that right?

A. Well now I am not quite sure what you mean by the question,—'simulated'.

Q. Well maybe I had to missuse a word.

A. No, I don't mean that,—I just don't know what you mean.

Q. Well, we will say it is an analogy.

A. Yes, it is an analogy, that is right.

Q. Now what I don't understand is that you have listed to counsel, on direct examination, certain benefits that you could see accrued by reason of the use of trading stamps,—right?

A. Yes, there are certain benefits.

[fol. 884] Q. And those benefits are what?

A. Well, you get your cash in,—you attract customers,—those are the principle things.

Q. You get your cash in and you attract customers?

A. Yes, and it helps your business to that extent.

Q. I see,—those are all of the benefits that you can think of right now?

A. I don't think of any others right off.

Q. All right sir, the principle benefit is the inducement to the purchaser, isn't it?

A. Well the inducement to the purchaser to do two things,—one, to pay cash, and the other, to do business with him.

Q. Yes, sir, and in so far as the merchant is concerned, the principle advantage to him is the inducement or the compulsion which the purchaser finds to do business with him, is that right?

A. Well that would have to be the first thing, certainly.

* * * * * * *

[fol. 885] Q. Now at the wholesale level, how is the cash discount paid?

A. How is it paid?

Q. Yes,—use an example.

A. By the prompt payment of the invoice,—I am not quite sure what you want.

Q. Well lets use our example: the wholesaler sells Mr. Miskovsky $1,000.00 worth of merchandise and offers him a cash discount and he takes it,—

A. Yes,—

Q. —now how is that cash discount paid,—the wholesaler owes him some money, doesn't he?

A. The transaction is netted off, and Mr. Miskovsky pays him $980.00.

Q. Just exactly as if the wholesaler had sold him the

merchandise for $980.00,—the mechanics are the same as if the wholesaler had sold him the goods for $980.00,—right?

A. Well, it depends on how the books are kept, whether the mechanics are the same,—that depends on the way it is handled on the books.

[fol. 886] Q. Then that dispenses with your answer,—the answer was, I believe, that they are paid by deducting it from the stated, or agreed, price as shown on the invoice, and for convenience, we pay another amount, is that correct?

A. That is substantially what I just said.

Q. Yes, sir,—we have it clear. Now you have another position that the cost of stamps are a part of the cost of doing business,—right?

A. That is correct, yes.

Q. What do you mean by 'the cost of doing business'?

A. I mean, generally speaking,—I would say I mean all of the expenses, except the cost of the merchandise and the cost of getting it on the shelves.

Q. Yes,—now what are the examples of the cost of doing business,—typical examples?

A. Rent, and insurance, and of course all of your wages, maintenance of your building, heating, lighting, and—those are the principle ones.

Q. Now where do the stamps go, in what category?

A. I would say that they could be classed as a financing expense,—they could be classed as a promotional ex-

[fol. 887] pense.

Q. All right,—

A. I don't think you can quarrel very much with either of those classifications; it would make no difference in your profit.

Q. Yes, that is right; now lets take them one at a time. If you put it into a promotional expense, or advertising, then it couldn't properly follow the financial expense, could it,—I mean those two things have no relationship to each other?

A. I wouldn't say they have no relationship to each other, because—

Q. Well, it can't be both, can it?

A. As an expense, it has characteristics of both, and for your convenience you have got to decide which one you think it has the most characteristics of and put it there. It is just like any other accounting question,—it is a factual question.

Q. You feel that promotional coupons and special give-aways are properly classified as advertising, as part of the cost of doing business?

A. I would say so, yes, sir.

• • • • • • •

[fol. 890] By Mr. Swinford:

Question: Mr. Peloubet, assuming, as you say, the transfer of goods or merchandise from the wholesaler to Mr. Miskovsky was for $1,000.00, with the usual two per cent included in the terms. You are stating, I believe, to this Court, that the price to Mr. Miskovsky is $1,000.00?

By the Witness:

Answer: Yes, sir, that is correct.

Q. Even though he only pays $980.00?

A. That is right.

Q. What is the net price?

A. Well, if I understand what you mean, the net price is what I take to be the price with all cash discounts and all other allowances off, and I would say the net price is $1,000.00.

Q. I thought you said with all cash discounts off?

A. No, no,—with all other discounts,—trade discounts, allowances, and that type of thing, with all of the adjustments to the price itself off, I would say it was $1,000.00.

Q. Now my question is, isn't the $980.00 sometimes referred to as the net price, as opposed to the 'price' as you use the term?

A. If it is I think it is quite erroneous.

Q. You are familiar with the works of Paton, are you not, on accounting?

[fol. 891] A. Very familiar; he is a good, personal friend of mine.

Q. He is recognized as an authority on this subject?

A. One of the finest.

Q. I would like to read to you, briefly, from the "Essentials of Accounting, by Paton",—I believe it was first published in 1954; it appears at page 334, and reads as follows,—

• • • • • • •

Q. All right,—"Interpretations of Sales Discounts. Discounts offered to customers should not be interpreted as either losses or expenses charged. To hold that such items are losses denies the fact that they are freely offered with the expectation and hope that they will be accepted; to treat discounts as expenses assumes that additional charges are involved in the case of sales to customers making prompt payment as compared with sales represented by [fol. 892] slow accounts, an obviously unreasonable position. The proper interpretation views regular discounts offered to induce prompt payment as offsets to nominal sales figures. The true, effective price is the net figure and if the gross price is recorded as a result of bill-writing and bookkeeping tradition the amount of discount concurrently or subsequently isolated must be treated as a deduction from gross sales".

Do you agree with that statement?

A. As I said before, I see no great objection to taking the cash discount off of sales when the cash discounts are generally taken. That is what I understand Professor Paton to say there, and I see no objections to it. I don't think,—it still has nothing to do with the essential nature of the cash discounts.

Q. Well I don't say that it does, but Professor Paton is here talking about the $1,000.00 as a gross price, and the $980.00 as a net price, isn't he?

A. Those are the words he uses,—I don't think it is a proper use of the words, but we can't help that.

Q. No,—but he is an authority?

A. Yes, he is an authority.

Q. All right, and he says that the true, effective price is the net figure, or the $980.00 figure, doesn't he?

A. I believe that is what you read, yes.

Q. Yes; all right, I will also ask you if you are familiar

[fol. 893] with his work in Advanced Accounting, which I believe was published in 1941?

* * * * * * *

Q. Are you familiar with that work?
A. Yes.

* * * * * * *

[fol. 894] Q. Quote: "The best procedure in all cases is to accept the lowest price provided by the invoice as the cost of the goods. Net prices are substantially on a cash basis and therefore represent effective costs. It is the net price that the vendor generally expects to collect and the buyer expects to pay. Failure to accept all discounts offered, indeed, is evidence of careless management or precarious financial condition. There is no excuse for the practice—unfortunately still common—of treating gross prices as genuine costs and purchased discounts as an item of income. Realized income cannot arise through the operation of buying". Do you agree with that statement, Mr. Pelou-
[fol. 895] bet?

By Mr. Lane:

I object, your Honor, upon the ground that it is irelevant and immaterial. As near as I can make out it merely states what Professor Paton thinks is a good way to run business and what is a better way to record discounts.

By the Court:

The objection will be sustained.

By Mr. Swinford:

We offer that portion of page 118 of Paton's Advanced Accounting, published in 1941, in evidence, which I have just read.

By Mr. Lane:

I object to it, your Honor.

By the Court:

Objection sustained.

By Mr. Swinford:

Exception. And we likewise offer the first paragraph in "Essentials of Accounting, by Professor Paton", the 1954 edition, the first paragraph appearing at page 334.

By Mr. Lane:

We object to it, your Honor.

[fol. 896] By Mr. Miskovsky:

Is this offered as a part of their cross examination of this witness, or as a part of their examination in chief?

By the Court:

The objection is sustained.

* * * * * * *

Q. You acknowledge, Mr. Peloubet, that Mr. Finney, who authored 'Principles of Accounting',—Finney and Miller, [fol. 897] published in 1953, as one of the outstanding authorities in the field of accounting?

A. It is one of the most widely used school books on accounting; I don't think it has quite the weight of some others.

Q. I see,—does Paton have more weight than Finney?

A. Generally, yes, but Paton is highly noted for works on accounting,—he has had some very brilliant and intellectual works on accounting, but he is always in the minority,—he is a wonderful fellow, and I like him, and I respect his intellect, but he is inclined to be in a small local minority.

Q. Now you don't mean that on the questions, or the texts that I just read from, the two texts offered in evidence, that he represents a minority view there, do you?

A. I think he represents the extreme edge of about an even majority.

Q. The extreme edge of an even majority?

A. I would say so, yes.

Q. All right, at page 305 of Professors' Finney and Miller, on Principles of Accounting, they say, quote: "The treatment of cash discounts as deductions from purchases

and sales is coming to be recognized as theoretically preferable. The treatment of purchase discounts as other income is based on an absurdity; it assumes that, by purchasing merchandise and paying for it within the discount period, [fol. 898] income is earned, regardless of whether or not the goods have been sold. With respect to both purchase and sales discounts, they are somewhat analogous to returns and allowances: both are deductions to determine the net cost of purchases and net proceeds of sales."

Do you agree with that statement?

By Mr. Lane:

The same objection, your Honor.

By the Court:

Objection sustained.

* * * * * * *

By Mr. Swinford:

Oh,—excuse me. We offer in evidence that portion of the book which I have just read.

By Mr. Lane:

And we make the same objection to it.

By the Court:

The objection will be sustained.

* * * * * * *

[fol. 899] Q. Mr. Peloubet, I am about through; I would ask you one question about plaintiff Speed's operation. Were you in the court room when he testified as to his method of doing business, both cash and credit?

A. Yes, I was here during the whole time.

Q. I will try to state it, and you tell me if I am wrong; Mr. Speed has three stores. In two stores he does an entirely cash business, and in one store he has approximately sixty per cent cash business and approximately forty per cent credit business. Now his credit terms are these, and they don't vary: if you want to buy for credit, he makes a

service charge of two per cent. You must pay your bill on or before the 10th day of the month succeding the date of purchase. Sixty per cent of his customers, he sells for cash, and forty per cent he sells under the method outlined for credit, but he charges them a two per cent charge for credit. He gives both of them stamps.

Now, given those facts, and those facts alone, is there any relationship between the trading stamps and cash discount, the trading stamps which he gives to all customers with equal impartiality, and the terms of credit?

By Mr. Watts:

Your Honor please, we object to that as assuming a state of facts not in evidence. Speed's testimony was that he gave the stamps with every cash transaction and with the [fol. 900] credit transactions where they paid by the 10th of the month, and that he charged two per cent for credit, and if they didn't pay their bill by the 10th of the month they lost their stamps and were charged an extra two per cent.

By the Court;

That is the way I understood it.

A. That is the way I recollect Mr. Speed's testimony, too.

Q. Well, all right, wait just a minute, and let me proceed just piece-meal, if I may. First, take this hypothesis; is there anything in those facts, standing alone, which would indicate that there is any relationship between the trading stamps and the cash discount?

A. Why yes, a great deal, because on your hypothesis Mr. Speed has succeeded in getting every one of his customers, presumably by the offer of stamps, to either pay him cash or fulfill his credit terms, which is what he wanted to do by giving the stamps. So I would say that in that case it was a true cash discount, and fully accomplished its purpose, under your hypothesis.

Q. Yes, and Safeway can do the same thing by simply giving two per cent in money,—couldn't they,—practically the same thing?

[fol. 901] A. If it was physically possible.

Q. Yes,—all right, now lets take the next step; my understanding is that if a man violates his contract with Mr. Speed and doesn't pay his bill by the 10th of the month following the date of the purchase, that he forfeits his stamps,—

By Mr. Lane:

I object to that, your Honor; it is not a question of violating the contract, it is just a question of whether or not the man takes the advantage of the discount offered and pays by the 10th of the month.

By the Court:

Yes, I think so.

. . . . . .

Q. I assume that it is a violation of that contract,—that [fol. 902] Mr. Speed doesn't permit anybody to go beyond the 10th of the month,—do you get my assumption?

A. I think I understand what you are saying, but you are assuming that Mr. Speed has some mysterious power of making people pay,—I never heard of a merchant that did.

Q. No,—no, Mr. Peloubet, I am not assuming anything.

A. Well I don't quite get it.

Q. What I am asking you to assume is, that he contracts with his credit customers, by a solemn contract, and they agree to pay him by the 10th of the succeeding month.

. . . . . .

Q. All right, will you assume that fact now?

A. All right, but I don't understand why a solemn contract is any different from any other ordinary contract.

Q. Tauché,—tauché,—all right now, go ahead, we have got the assumption; now what is the analogy between the cash discount system and the trading stamps, if that is true? [fol. 903] A. Well here,—he has some cash customers, and there are some that have an irrevokable contract to pay by the 10th of the following month?

Q. Yes,—yes.

A. Well all right then, he is on the same basis just as if he was all cash,—as far as his discount goes he is on the same basis as if he was on all cash, because the 10th of the

following month and cash are the same in most discount calculations. I don't know whether that is what you are after, but that is what it looks like.

Q. All right,—yes,—now, I want to take you one further step, because if a customer has a contract with him and don't pay him by the 10th, he takes the stamps away from that customer; now does that compare by any analogy to the cash discount system at the wholesale level?

A. Well I think it is very close to it, yes.

Q. You think it does,—all right, I will ask you one more question; does the cash discount system at the wholesale level imply a payment within the cash discount period, or a longer time, but both periods are within the terms of the contract,—is that right?

A. Why sure.

Q. Well answer me, please?

A. Well, if you say one contract is one thing and another is another, and that is the hypothesis,—yes, that is the hypothesis.

[fol. 904] Q. Well all right, so the cash discount system, at the wholesale level, never took into consideration, and never contemplated a breach of contract, did it?

* * * * * * *

A. Well we are talking about the factual hypothesis; if you say that is your hypothesis,—that is your hypothesis, but—

Q. Well, all right, Mr. Peloubet, that is all.

A. But I am at a loss to see where it is.

* * * * * * *

[fol. 905] By Mr. Miskovsky:

T) Plaintiff rests, your Honor.

* * * * * * *

By Mr. Crowe:

The defendant would like to call just one witness in rebuttal, if the Court please.

By the Court:

Very well.

Defendant's Rebuttal

Ford L. Billips, being called as a witness in rebuttal, in behalf of defendant, being first duly sworn upon oath to testify the truth, the whole truth and nothing but the truth, upon interrogation by counsel, testified as follows:

Direct examination.

By Mr. Crowe:

Question: Will you state your name, please?

By the Witness:

Answer: Ford L. Billips.

Q. What is your business?
A. I am a certified Public Accountant.
Q. Mr. Billips,—

* * * * * * *

[fol. 907] Q. How long have you been a Certified Public Accountant?
A. Since 1921.

* * * * * * *

Q. Have you practed your profession of Accounting ever since that time?
A. Yes.
Q. Had you practiced accounting prior to that time, Mr. Billips?
A. Oh, for approximately ten years before that.
Q. You haven't prepared or typed up a list of your qualifications, like Mr. Peloubet had?
A. No.
Q. Mr. Billips, you have heard Mr. Peloubet, of New York City, an Accountant, testify here, have you?
A. Yes, sir.
Q. Have you been employed by Safeway Stores to make an investigation of the question as to the proper treatment of cash discount, Mr. Billips?
A. I have.
Q. About when were you employed?
A. In June, of this year.

Q. What research and preparation have you made, Mr. Billips, in the accounting field?

[fol. 908] A. Well, I used our own library, and some other Accountants' libraries, and the library of the University at Norman, and the Oklahoma A. & M. Library, at Stillwater, and the lib at the Oklahoma City University.

Q. Have you examined any authoritative work on accounting, in that research?

A. Yes, sir.

Q. Approximately how many authorities have you examined on accounting?

A. I would say thirty or forty.

Q. Have you examined Montgomery, and Finney, and Paton, included in the others?

A. Yes, sir.

Q. I will ask you whether or not they are recognized authorities in the field of accounting?

A. I think unquestionably.

Q. And I will ask you whether the other authorities you have examined are recognized as authorities in the field of accounting?

A. I considered them authorities,—maybe not so well recognized as some of the better known ones.

Q. Are there some others that you could name, that you recognize as authorities in the field, besides the three I mentioned?

A. Well, Finney and Miller,—Finney is with North-

[fol. 909] western University, and Miller is at Michigan, and Smith, at Michigan,—Holmes, at Cincinatti,—Myers, at Leola,—I don't know, there are a lot of those. Johnston, of Syracuse, is one.

Q. Do you have most of those text books here in the court room,—those authorities on accounting?

A. Yes, sir.

Q. Mr. Billips, I will ask you whether or not you have also examined and read the contract which S & H has with Speed in this case?

A. I have.

Q. I will ask you if you ever bought groceries at Speed's, where you got trading stamps?

A. Oh, yes, I live not too far from one of his markets.

Q. Are you, then, familiar with the method by which Speed uses trading stamps in his stores here?

. . . . . .

[fol. 910] Q. Now then, Mr. Billips, I want to ask you, first, from your research, investigation and examination of the authorities, and from your experience, I want to ask you whether or not, in your opinion, the cash discount is a reduction in the price of the article with which it is offered?

A. Yes, that is my opinion.

Q. I will ask you, what did your research indicate as to the opinion of the Accountants in the field at this time, on the subject?

A. To me it indicated that the vast majority of Accountants and text book writers were of the same opinion.

Q. As what?

A. That a cash discount was a reduction in price.

[fol. 911] Q. Now, why do you think the only sound way to treat a cash discount is as a reduction in price?

A. Well, there are several reasons. One reason would be that a cash discount is,—well, I will go back,—one reason would be that the net price, that is, the invoice price, less the cash discount, represents the amount that the seller expects to collect and that the buyer expects to pay.

Q. All right?

A. Another reason is, that a purchaser or buyer cannot have an income by merely buying something; he has to sell what he bought at more than he pays for it, and that from the seller's standpoint you can't have an expense, because the customer to whom he sold the merchandise paid him cash at the time, or within the time that was required to obtain the cash discount. Another reason is, that the usual amount of the cash discount is disproportionate to interest rate, and should not be considered somewhat equivalent to interest.

Q. Now then, let me ask you whether or not the terms "two per cent, ten days,—net thirty days", is a more or less usual cash discount term?

A. I think that is customary.

Q. And what does—

. . . . . .

[fol. 914] Q. Now Mr. Billips, you said one reason cash discounts could be treated as a reduction in the price, and not as interest, was that the rate is out of all proportion to the rate of interest, is that right?

A. That is right.

Q. What is the rate of interest, on an anualized basis, under the terms "two per cent, ten days—net thirty days"?

A. About thirty-six per cent.

Q. Thirty-six per cent?

A. Yes, sir.

* * * * * * *

[fol. 915] Q. Now, Mr. Billips, let me ask you this; when Miskovsky, and the other Thrif-T-Wise merchants, who are on a strictly cash basis,—those who are on a strictly cash basis, sell a pound of coffee for a dollar and give a green trading stamp, which they admit and agree is worth at least two and one-half cents,—

* * * * * * *

Q. Yes, ten trading stamps given with a dollar sale, worth two and one-half cents on the dollar,—two and one-half cents in value, will you tell the Court your opinion of what is the price at which Mr. Miskovsky and the cash merchants have sold that coffee?

[fol. 916] A. In my opinion, it is ninety-seven and one-half cents.

Q. What is, in your opinion, the effect of the giving of the green stamps in that transaction,—the effect on the price of it?

A. Well, I think it reduces the price, the shelf price, or whatever you want to call it, by the amount of the value of the stamp or stamps.

Q. Now I will ask you whether or not, in your opinion, as an accountant,—well let me ask you this, first;

Now then, if you would assume that Miskovsky, and the other merchants of the Thrif-T-Wise group, and Speed, gave double stamps from 1952 up until the summer of 1954, and after, when this litigation arose, that they had a value of a nickel on Wednesday; if they sold a pound of coffee for a dollar and gave double stamps of that value, what, in your opinion, was the price at which they sold the coffee on that day?

A. Ninety-five cents.

Q. I will ask you whether, in your opinion, Mr. Billips, that, as an accountant, the sale of the pound of coffee at a dollar, and the transfer of stamps at a value of a nickel with the coffee, would be any different, in your opinion, than if they had sold the coffee for a dollar and gave a nickel back in change?

A. As a practical matter, I don't think there is any [fol. 917] difference. The stamps are not exactly money, —there is that difference.

Q. They are near money, are they?

A. Well, they have a purchasing power,—you can't buy everything with them, but I understand,—I have never redeemed any books, but I understand that the premiums that are offered are very widely diversifide.

Q. Now then, Mr. Billips, if you will assume that on the 15th day of September, which was on Wednesday, that Miskovsky and his associates of the Thirf-T-Wise were giving double stamps with the minimum priced articles, worth a nickel to the dollar, and that Safeway, on that date, advertised and sold coffee for ninety-five cents, I will ask you if in your opinion as an accountant, there is any difference in the price at which Safeway sold coffee on that date and the price at which Miskovsky and the Thrif-T-Wise group sold it, with stamps?

* * * * * * * * *

[fol. 918] A. I think it is essentially the same transaction.

Q. What about the price?

A. It reduces the price.

Q. Was the price the same to both of them?

A. Both of them, ninety-five cents.

Q. Now Mr. Billips, if, during that time, Miskovsky and his associates of the Thrif-T-Wise group were, on each day of the week, giving trading stamps worth two and one-half cents with each pound of coffee, the minimum price of which was one dollar, and Safeway was selling the coffee, during that period, at a dollar, will you tell the Court, as an accountant, whether, in your opinion, Miskovsky and his associates were selling coffee cheaper than Safeway was?

A. Well I would think so, for the simple reason that the purchaser, at the one place, for a dollar he only got a pound of coffee, and at the other place he got a pound of coffee and some stamps that had a value.

Q. Of two and a half cents?

[fol. 919] A. Yes, sir, of two and one-half cents.

Q. Now then, let me ask you this, from the standpoint of a customer; assume that a customer goes to these green stamp stores, and bought a pound of coffee, and got stamps worth two and one-half cents, and the same customer went to Safeway the same day and bought a pound of coffee and paid a dollar and got nothing else; would you say that the customer, at Miskovsky's, got more for a dollar than the one did at Safeway?

A. I think that is obvious, to the extent of the value of stamps that he got.

Q. Now Mr. Billips,—oh, you may cross examine.

Cross examination.

By Mr. Lane:

Question: Mr. Billips, you were not consulted by Safeway a year ago, in July, 1954, when Safeway cut prices upon the theory that stamps cut prices, were you?

A. No, sir.

• • • • • • •

Q. You were not consulted until 1955, after Safeway had adopted their theory?

[fol. 920] A. I was employed in June, 1955. I don't know what theories they had before that time.

Q. No, but you heard the testimony,—you have heard the testimony here for several days, and know that that was their theory in July, 1954, also?

A. Well, from the testimony, I would say so.

Q. All right, up until June of 1955, obviously you had no particular occasion to consider the effect of trading stamps as a cash discount?

A. Well generally, no.

Q. But you then made an examination of the matter for Safeway and concluded that cash discounts,—stamps given for cash discounts, had the effect of cutting prices?

A. Well my opinion of a cash discount is—

Q. Well after you—

. . . . . .

A. My opinion, as far as the cash discount is concerned, is the same as it has been for a long, long time. Trading stamps,—I never had occasion to make a very intensive study of them before.

Q. Now you heard the testimony of Doctor Johnston on the one hand, to the effect that cash discounts do cut [fol. 921] prices, and the testimony of Mr. Peloubet on the other hand that they don't cut prices; you have heard that in this court room?

A. Yes, sir.

Q. And in that controversy,—in that conflict of testimony, you will take Doctor Johnston's side, which is the Safeway theory?

A. I think that cash—

Q. Well what is your answer?

. . . . . .

Q. Will you answer my question "yes" or "no"?

A. Well now repeat your question, so I will know what I am saying "yes" or "no" to, whether I can say it [fol. 922] properly.

Q. Well all right, you heard Doctor Johnston expound his theory that cash discounts do cut prices, and you heard Mr. Peloubet offer the opinion that they don't cut prices. In that conflict, you follow Doctor Johnston and take issue with Mr. Peloubet?

A. That is right.

Q. And that is the root of all the testimony that they have given?

A. That is right.

. . . . . .

Redirect examination.

By Mr. Crowe:

Question: Mr. Billips, do you have an opinion as to whether or not these trading stamps are a cash discount?

By the Witness:

Answer: I don't think so.

Q. You don't think what?
A. That they are a cash discount.

* * * * * * *

[fol. 923] Q. Well the Court says you can answer.
A. Well I said I didn't think they were cash discounts.

* * * * * * *

(Witness excused)

By the Court:

Do you have anything else?

BOTH SIDES REST

By Mr. Crowe:

The defendant rests, your Honor.

By Mr. Miskovsky:

The plaintiff rests, your Honor please.

By the Court:

Very well; the case is closed, as to evidence.

* * * * * * *

[fol. 927] COURT'S DECISION

By the Court:

Gentlemen, as the Court understands it, this is an action wherein plaintiff, as a Trade Association, sues the defendant, Safeway Company, praying for an Order restraining the defendant from violating the provisions of the Oklahoma Unfair Sales Act, as set out in Title 15, O.S.A., Sections 598.1 to 598.11, inclusive, in the following particulars: That the defendant, Safeway, did, on certain dates, as set forth in the Petition of the plaintiff, advertise, offer for sale, and did sell certain articles of merchandise at retail at less than cost to the retailer, as

defined in the Unfair Sales Act, with the wrongful intent and purpose of inducing the purchase of other merchandise or arbitrarily diverting trade from members of the plaintiff Association, competitors of the defendant, and otherwith injuring members of the plaintiff Association, with the wilful, malicious and unlawful intent and purpose [fol. 928] of impairing and preventing fair competition, injuring members of the plaintiff Association, and injuring the public welfare,—as to specific dates,—places of locations,—the specific dates running from September 15, 1954 to October 22, 1954, and occurring in the cities of Oklahoma City, Enid, Norman, Tulsa and Shawnee.

The defendant, Safeway, for its answer, admits its corporate existence, as well as the corporate existence of the plaintiff, and for further answer denies the advertising, offering to sell, or sale of two certain items, but it admits that it did, as alleged by the plaintiff, advertise, offer for sale and sell, all of the other items set forth in Exhibit "B" to plaintiff's Petition upon the dates and at the places and for the prices set forth in the plaintiff's exhibit and made a part of this Petition.

The defendant, Safeway, denies that such was in violation of the Unfair Sales Act, but that the same was made in good faith to meet the price of a competitor, or competitors, who were, on those dates, selling the same articles or products of comparable quality at such prices.

The defendant, for further answer, denies that it sold any of said articles at a reduced price with an unlawful intent or purpose.

The defendant, Safeway, for further answer, alleges that Louie J. Speed, doing business as Speed's Food Market, and others, were, on the same dates as set forth [fol. 929] in the plaintiff's Petition, as competitors of the defendant Safeway, offering for sale and selling like merchandise at the prices set forth in their Cross-Petition, and on the dates of such sales certain Association members were giving to their customers trading stamps or coupons, redeemable cash register receipts and other evidences of credit, without making or collecting any additional charge therefor, and that such had a cost value of not less than 2.8 per cent of the sellers' price, and that on Wednesday

and Friday such evidence of credit had a cost value of not less than 5.8 per cent, and that the Safeway, defendant, had adjusted its prices on articles alleged to have been offered and sold to meet such competition.

And also, Safeway alleges that in certain other towns, other than in Oklahoma City, that it adjusted its prices to meet competition of other grocers in those communities.

Further answering, the defendant, Safeway, states that if it was not justified in meeting competition in this manner that then the giving of such evidences of credit without additional charge had the effect of offering for sale and selling at less than the minimum mark-up, and was in violation of the Unfair Sales Act.

The defendant Safeway, Cross-Petitions against Louie J. Speed, doing business as Speed's Food Market, and twelve other members of plaintiff Association, alleging that those named parties, in the giving of trading stamps [fol. 930] and other evidences of credit, caused and,—caused to be advertised for sale, and did sell, certain merchandise at less than the statutory mark-up and in violation of the provisions of the Unfair Sales Act, and the defendant Safeway, likewise prays for a permanent injunction.

For the purpose of this trial, it was agreed,—it was Ordered by the Court, that the issues as between plaintiff Association and Safeway, and as between Safeway and Speed, be tried together.

The Cross-Defendant, Speed, for answer to the Cross-Petition of Safeway, denies that he has violated any provisions of the Unfair Sales Act, and alleges that he had been, for a number of years, following the practice of allowing his customers a uniform store-wide discount for cash, either at the time of purchase or not less than the 15th of the following month, which had been accomplished by the issuance of S & H Green,—S & H Trading Stamps, furnished to him by the Speery & Hutchinson Company, and which were redeemable, by the S & H Company, which discount was approximately 2.5 per cent.

First of all, I think that briefly states the issues set up by the pleadings,—first of all, there is no doubt of the right of the plaintiff to maintain this action. Section

598.10 specifically grants this authority. It appears from the pleadings and the evidence that members of the Association consist of approximately 1,700 independent mer-[fol. 931] chants throughout the state, with more than 200 in the Oklahoma City area.

Now it is necessary that the Court consider the Unfair Sales Act, which Act has been declared to be constitutional by our Supreme Court. Now Section 598.2 is the definition section of the statute,—Section 598.3 prohibits sales below cost. That section reads: "It is hereby declared that any advertising, offer to sell, or sale of any merchandise, either by retailers or wholesalers, at less than cost as defined in this Act with the intent and purpose of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or otherwise injuring a competitor, impair and prevent fair competition, injure public welfare, are unfair competition and contrary to public policy and the policy of this Act, where the result of such advertising, offer or sale is to tend to deceive any purchaser or prospective purchaser, or to substantially lessen competition, or to unreasonably restrain trade, or to create a monopoly in any line of commerce."

Section 598.4 is a penal section of the statute, providing that any violation is a misdemeanor, and fixing punishment.

Section 598.5 provides injunctive relief that may be had through the courts; section 598.6 sets out the exempted sales.

Section 598.7 has to do with meeting competitors' [fol. 932] prices,—"Any retailer or wholesaler may advertise, offer to sell, or sell merchandise at a price made in good faith to meet the price of a competitor who is selling the same article or products of comparable quality or cost to him as a wholesaler or retailer".

Section 598.8 is determination of cost of sale outside ordinary channels of trade.

Section 598.9 provides for witnesses,—production of books, records, and so forth.

Section 598.10,—I have talked about that,—Trade Associations. Any individual, or a trade association, may bring an action in court.

As I see it, what is before the Court at this time is,—first,—did the defendant, Safeway Company, sell below the statutory price as determined and fixed by the Unfair Sales Act? Second,—if so, was it justified under the terms of the Act? Third,—or was it done with intent to innure competitors and lessen competition? Fourth,— the defendant, Safeway, admits the sale of various articles for the prices set forth in the exhibits attached to plaintiff's Petition, but that they reduced such prices only to meet the competition of those,—of the plaintiffs who were giving trading stamps here in the Oklahoma City area, and in Enid, Shawnee, and other places, because other retailers had reduced prices.

In reply, the plaintiff and Cross-Defendant, Louie J. [fol. 933] Speed admits that he gave trading stamps on the basis of one stamp for each ten cent purchase and as inducement for cash payment or payment not later than the 10th of each month, but that the sale price of the article was not below the statutory mark-up described in the statutes.

Six,—if the giving of the trading stamps is a violation of the statute, that is, if it had the effect of reducing the price below the statutory mark-up permitted by statute, then the Cross-Petitioner violated the law and should be enjoined.

Seven,—if the giving of the trading stamps is illegal and in violation of the Unfair Sales Act, was the defendant, Safeway Company, justified in reducing its price so as to meet such prices?

Eight,—if the giving of trading stamps was not a violation of the statute, that then the defendant, Safeway Stores, violated the law and should be enjoined.

Now as I further understand it, a violation of the Unfair Sales Act arises where a retailer, first, sells below his cost, as that term is defined in the Act; second, without legal justification; third, with the intent condemned by the Act. If there was a sale below cost,—if so,—then there would be a violation of the statute, and it should be stopped.

A retailer may sell below his cost without violating this Act, to meet the lawful price of his competitor, but

[fol. 934] cannot sell below his cost on this excuse when the price of a competitor is an unlawful price,—that is, one violation of the law will not justify another,—which raises the next question, of whether or not there was a legal justification.

The justification sought is that the thirteen members of plaintiff Association were giving trading stamps, that is, thirteen out of some,—well, many others.

It is admitted that only a small minority of plaintiff members give trading stamps or other evidences of like character, and the facts are that these who give the stamps or other evidences of credit, give them on a general store-wide basis, that is, they may have certain so-called traffic items on which the mark-up is very close to the specified minimum, while most of the other merchandise has a greater mark-up.

And further, the defendant, Safeway, admits that the items complained of were advertised, offered for sale and sold for less than statutory mark-up.

Safeway is in a peculiar position in this case, alleging on one hand that it reduced its prices to meet lawful competition, while on the other hand it is alleged that the giving and distribution of trading stamps reduced the price, and were illegal,—that they reduced the price below the statutory minimum.

The defendant, Safeway, contends that in the cities of [fol. 935] Norman, Shawnee, Enid and Tulsa, on the date set out in the Plaintiff's Petition, it reduced the prices on the various items complained of to meet competition, contending that it could only presume that the prices it was meeting were legal prices. I don't think that is a logical presumption, gentlemen, for here we have one of the largest chains of grocery stores, who undoubtedly, because of their size, can buy as cheap or cheaper than anyone else.

The statute on meeting competitors prices reads,—I will read it again,—quote, "Any retailer or wholesaler may advertise, offer to sell, or sell merchandise at a price made in good faith to meet the price of a competitor who is selling the same article or products of comparable quality at cost to him as a wholesaler or retailer".

As I understand the Act, that if,—Store "B" out here has been able to make a good deal,—a bona fide deal,—then Store "C" would be permitted to meet that competition,—that is the way I understand the situation.

The logical presumption, gentlemen, seems to me would be that the defendant, Safeway, should know that something was wrong with the competitor's price. As I say, they can probably buy as cheap, or cheaper, than anyone else, and should know that there was something wrong.

Safeway's remedy in that case would be redress through the courts; that is why we have the Unfair Sales Act,—that is what the courts are here for,—and that is what [fol. 936] has been done since the inception of this action. I granted the restraining orders as against the Cross-Defendants, and indicated that I would grant them against any of the plaintiff's members, on a Motion or Application of the Safeway, and in the ones in which the Court has acted,—taken action,—every one of them,—the Court has been dilligent in providing relief and issuing the injunctions.

The Court knows this, as a matter of personal knowledge, that separate actions have been filed in my own home District,—in Enid,—Alva,—Watonga,—restraining other retailers from violating the provisions of the Unfair Sales Act at the instance and behest of the,—upon the Petition of the Safeway Company,—and as I say, in that particular case counter-restraining orders have been issued.

Gentlemen, to attempt to handle these problems in any other manner couldn't have any other effect than to bring chaos. First, Safeway sets a price,—Blakemore, in my District, reduces it; Safeway says they are going to meet it,—the Red Bud then reduces their price,—and there we go,—you would have nothing but chaos, gentlemen,—one violation just brings about another. I say to handle it in any other manner except in the orderly manner as provided by the statute will only bring chaos in the grocery business and have the net results of ruining hundreds, if not thousands, of small independent merchants, and that is the only logical conclusion the Court can come to there.

[fol. 937] Now we have this proposition,—the Statute, Section 'c' of 598.5 reads, "Evidence of advertisement, offering to sell, or sale of merchandise by any retailer or wholesaler at less than cost to him, shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition". As I understand the rule of law, that is prima facie evidence, and that, that evidence can then be rebutted by the person charged, that he was not doing that,—to start out with that the prima facie evidence that the defendant, Safeway, was doing that with the purpose of injuring competitors or destroying or substantially lessening competition.

Now Mr. Christensen was on the stand, and stated that it was not their intention to injure competitors,—it was merely to be competitive, and that another reason was to secure a court decision. That, to my mind, gentlemen, is not proper; that is not the way to transact business,—not the way to treat the courts. They had a remedy of coming in and asking for a restraining order and trying it out, and not violating the law, but he goes on and says that they had no intent to hurt anybody; they didn't prosecute,—they didn't seek an injunction,—they just cut prices.

Now you gentlemen all know,—most of you have had as much experience as the Court has had, and some of you a lot more,—it is awfully hard to establish intent,—what [fol. 938] a person has in their mind, what they intend to do,—in fact, intent is a state of mind. I don't know how you can prove it by direct evidence. Very seldom you can prove intent, unless the party admits it, except from circumstances,—what went on. Mr. Christensen said,—he made this statement on cross examination,—that it was the policy of their Company to cut prices regardless of illegality. It isn't right for a large Company like this, to do this, and at the same time Mr. Christensen also stated that he had never read the Unfair Sales Act,—hadn't read it to date,—last Monday or Tuesday. You can only arrive at intent by,—largely by circumstances, as I have stated,—it is one way one time and another way another time.

And now we get to the question of trading stamps; does the giving of trading stamps, redeemable in merchandise, constitute a violation of the Unfair Sales Act when stamps are given with commodities sold at the minimum price permitted under the Act? Section 598.2, one of the definitions,—"When used in this Act, the term 'cost to the retailer' shall mean the invoice cost of the merchandise to the retailer or the replacement cost of the merchandise to the retailer, whichever is the lowest, less all trade discounts except customary discounts for cash".

I think this can be answered by a consideration of the nature of the purpose of the trading stamp coupons, whether they are to be regarded as a discount for cash or [fol. 939] a means of advertising or to intice customers or to retain your trade, or do they simply represent a cut in the sale price of the articles with which they are given. There is no doubt that if it is the latter, they would accomplish a cut in price, and the sale of such merchandise sold at the minimum allowed under the Act and the giving of stamps would amount to a sale below the minimum.

Now on the other hand, if the stamps are given in the nature of an inducement to attract customers to the store, or in the nature of advertising, an advertising device, or as a cash discount for cash,—can they be condemned and found to be in violation of the Unfair Sales Act any more than free parking, musical programs, care of children, and all the other thousand and one promotional schemes that we have. It is not evidence in this case, but the Court can read, and knows what is going on. This week I noticed an advertisement in the Daily Oklahoman where a group of merchants out here were giving everything from gold fish to trips to Havana, Cuba,—it seems to be the practice to give something, and people are looking for it; they are not interested in the cash reduction,—it wouldn't make any difference to them,—they are looking for something like these premiums that are set out in these catalogues,—that is what they are looking for,—it seems to be the custom now. Doctor Johnston says it is bad business,—he may be correct on that,—they may all [fol. 940] go broke with these give-away processes that

they are in. But he also says that if it pleases the customer, it is good business,—so there we are again. Personally, I don't think it is very good business, but that is their troubles, I don't think it is a prerogative of this Court to try to tell any merchant what is good or bad business,—the way he runs it,—as long as it is not a violation of the statute.

So if these other things I have just mentioned are not condemned, or cannot be condemned,—merely promotional schemes for advertising, I don't believe that the giving of the stamps with cash payment or for cash to be paid in a certain length of time would be a violation. They are in the nature more for prompt payment, it would seem to me to be. These stamps have been in use for a long time, I think some evidence has been introduced that they have been in use in Oklahoma for some forty-five years,—Mr. McCarty said he had been here twenty-two years, in charge of it, working with it. An examination of the contract here with Speed reveals that they are a cash discount; as I understand it, a means of providing a cash discount. Cash is not given, the stamps are given on the basis of one stamp for each ten cent purchase, and when you have a book, when you have made $120.00 in purchases you have accumulated a book of stamps that will account for about $3.00 on some premium that the good [fol. 941] housewife, and not unfrequently I expect the husband, gets something that they otherwise would not have gotten.

Cash discounts have been in vogue for a long time. Purchasers are given the benefit of the traditional cash discount, and the merchant has the reciprocal advantage of trade,—getting his money. Now if he doesn't get his money by a certain time he doesn't give the discount, doesn't give the stamps,—it is not a price adjustment, it is just a mode of financing. It is not a trade discount, nor a rebate, nor a concession. There is no suggestion in the Unfair Sales Act of desire to outlaw the true cash discount; in fact it excludes cash discounts as distinguished with trade discounts.

I would like to state further, on this contract that

Speed has with the S & H Company, it specifically provides that they will cancel the contract at any time the stamps are issued in any other manner than which is set forth in the contract, and that is, one for each ten cent purchase.

We have had evidence here by Doctor Johnston,—he says he doesn't think it is good business; it may, or may not be, but he also says if it pleases the customer it is good business,—that seems to be what the people want, and it is not in violation of the provisions of the Unfair Sales Act,—doesn't reduce the prices. You see, here is what we have, gentlemen,—Speed advertises some merchandise for, say $1.00; the defendant, Safeway, advertises [fol. 942] it for, lets say, 97¢, or 98¢, and stands on the theory that they are meeting the green stamp competition. That appears in the public press,—in the newspapers; it appears on the shelf. The only thing that the purchaser sees is that the article is priced at 98¢; he doesn't give any further thought to the trading stamp,—he just sees that the other man has it two cents cheaper.

So you can see how the reduction of price,—what effect it has on the human eye, or the human mind. We go too far on competition. Sometimes I am afraid it is hard to distinguish where competition stops and greed and avarice take over. We know the terrible competition that is going on now in this country in the automobile industry. It looks as though there won't be but three of them left. If two of them have their way, there will only be two of them, and if one of them has its way, there will only be one,—so I say, it is hard to tell, sometimes, where competition stops and greed and avarice take over. That is the purpose of the Unfair Sales Act. We have had it,—it has been in vogue in this country,—it has been going for the last fifty or more years, to provide fair competition and protect the public, because too often,—and it has been shown many times in the history of this nation,—that when it is 'all out', the picture changes, and the public pays.

The Court therefore, finds that on the dates alleged [fol. 943] in plaintiff's Petition, the defendant, Safeway, did advertise and offer for sale, and did sell the items

of merchandise set forth and at a price below the minimum prices as fixed by the Oklahoma Unfair Sales Act.

The Court further finds that on the dates alleged in plaintiff's Petition, the defendant, Safeway, without legal justification, wilfully and intentionally reduced its prices in an effort to increase its volume, to the detriment of other grocers.

The Court further finds that the Cross-Defendant, Louie J. Speed, did not, on the dates alleged, advertise, offer for sale or sell the merchandise alleged at a price lower than that described and permitted by the Unfair Sales Act.

The Court further finds that the giving of trading stamps, in accordance with the conditions of the trading stamp contract, is in the nature of a cash discount, and is not in violation of the Unfair Sales Act.

And the Court concludes that the injunction be made permanent against the defendant, Safeway Company.

We have had, heretofore, some complaint about double stamps. I think that part of the restraining order should also be continued and made permanent, to avoid any further trouble on that issue, either whether they are cash-saver coupons, or what they are. I am afraid somebody will get off the reservation and misunderstand what the [fol. 944] Court has in mind. We will continue that part and make it permanent as to Speed.

Now the other defendants,—or the other Cross-Defendants, this being the date,—those cases were continued until the 17th,—that part of the restraining order should be continued in full force and effect until further hearing.

By Mr. Crowe:

Now if your Honor please, I don't think you said it, but I know you meant to,—denying the injunction otherwise as to Speed?

By the Court:

Yes.

* * * * * * * *

[fol. 945] By Mr. Crowe:

Now then, the defendant, Safeway Stores, requests the Court to limit the injunction against it to the five towns mentioned in the Petition which are part of the issues of this case, as to which only, evidence has been given. I have heretofore presented that to you, you know, and you do know that there were no allegations of any violation anywhere except the five towns.

* * * * * * *

[fol. 946] By the Court:

I am going to make that in the entire District, because the evidence shows that Mr. Christensen and his price-maker make the prices for the entire District, so I think they should be enjoined over the entire District, because they will just go in there and some store manager will come in and defend it on the theory that he got his instructions from Oklahoma City, so I think,—

By Mr. Crowe:

Well I am just trying to find out what you are holding; I am not arguing with you. If you are talking about this Division, that is Arkansas, also, and I know you don't mean to go that far.

By the Court:

Well we will confine it to the State of Oklahoma; I didn't know Arkansas was in this District; I beg your pardon.

* * * * * * *

[fol. 948]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

No. 134,533.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., a corporation,

Plaintiff,

vs.

SAFEWAY STORES, INC., a foreign corporation,

Defendant.

FINAL DECREE—October 21, 1955 (signed Dec. 9, 1955)

This cause came on regularly for trial on the 17th, 18th and 21st days of October, 1955, before F. B. H. SPELLMAN, Assigned Judge of the District Court within and for Oklahoma County, State of Oklahoma, sitting without a jury, upon the petition of the plaintiff, Oklahoma Retail Grocers Association, Inc., a corporation, and the cross-petition of the defendant, Safeway Stores, Inc., a corporation, against the plaintiff, Louie J. Speed, Inc., d.b.a. Speed's Food Market #1; and

[fol. 949] MISKOVSKY and MISKOVSKY, by GEORGE MISKOVSKY: W. J. HOLLOWAY, SR.: LOONEY, WATTS, ROSS, LOONEY & NICHOLS, by M. A. Ned LOONEY and CLYDE J. WATTS: DAVID S. MACLAY (of New York City); and CASEY, LANE & MITTENDORF (of New York City), by SAMUEL M. LANE and ROBERT BESHAR, appeared as counsel for the plaintiffs; and

ENBRY, CROWE, TOLBERT, BOXLEY & JOHNSON, by V. P. CROWE and JOHN W. SWINFORD, appeared as counsel for the defendant; and

The Court, having heard the testimony and having examined the proofs offered by the respective parties, and being fully advised in the premises, and having filed herein its findings of fact and conclusions of law, summarized as follows:

1. That, on the dates set forth in plaintiff's petition, in Oklahoma City, Midwest City, Tulsa, Enid, Shawnee, and Norman, defendant, Safeway Stores, Inc., a foreign corporation, and the agents, servants, clerks, and employees of said defendant, and all persons acting by or under the authority of said defendant, did advertise for sale, offer for sale, and sell certain selected traffic items of merchandise at the prices therein set forth, all of which prices were below the minimum [fol. 950] price allowed by the Oklahoma "Unfair Sales Act".

2. That, on the dates set forth in plaintiff's petition, in Oklahoma City and Midwest City, when defendant, Safeway Stores, Inc., a foreign corporation, and the agents, servants, clerks, and employees of said defendant, and all persons acting by or under the authority of said defendant, reduced its prices as aforesaid, below cost to the retailer, allegedly to offset in good faith the value of trading stamps issued as a discount for the prompt payment of cash by certain of defendant's competitors, such advertising for sale, offering for sale, and selling at less than cost to the retailer was not in good faith to meet the prices of competitors selling the articles at cost to them as retailers as defined by the Oklahoma "Unfair Sales Act"; and such advertising for sale, offering for sale, and selling by the defendant, Safeway Stores, Inc., was without legal justification.

3. That, on the dates set forth in plaintiff's petition, in Tulsa, Enid, Shawnee, and Norman, when defendant, [fol. 951] Safeway Stores, Inc., a foreign corporation, and the agents, servants, clerks, and employees of said defendant, and all persons acting by or under the authority of said defendant, reduced its prices below cost to the retailer as aforesaid, allegedly to meet in good faith the prices of competitors who were on those dates selling the same articles or products of comparable quality at such prices, such advertising for sale, offering for sale, and selling by the defendant, Safeway Stores, Inc., at said reduced prices was

not in good faith to meet the prices of competitors selling the articles at cost to them as defined by the Oklahoma "Unfair Sales Act" but was the meeting of prices which the defendant, Safeway Stores, Inc., either knew or had reason to know were illegal prices and was therefore without legal justification.

4. That, on the dates set forth in plaintiff's petition, in Oklahoma City, Midwest City, Tulsa, Enid, Shawnee, and Norman, defendant, Safeway Stores, Inc., a foreign corporation, and the agents, servants, clerks, and employees of said defendant, and all persons acting by [fol. 952] or under the authority of said defendant, did advertise for sale, offer for sale, and sell the specified items of merchandise at less than cost to the retailer as defined by the Oklahoma "Unfair Sales Act" with the intent and purpose of unfairly diverting trade from its competitors; which acts constituted unfair competition, were contrary to public policy, and were in violation of the Oklahoma "Unfair Sales Act".

5. That, on the dates alleged in defendant's cross-petition, the plaintiff, Louie J. Speed, Inc., d.b.a. Speed's Food Market #1, and the agents, servants, clerks, and employees of said plaintiff, and all persons acting by or under the authority of said plaintiff, by the acts of selling merchandise at cost to the retailer as defined by the Oklahoma "Unfair Sales Act" and issuing trading stamps therewith as a discount for the prompt payment of cash did not thereby advertise for sale, offer for sale, or sell merchandise, as alleged, at a price lower than the minimum price allowed by the Oklahoma "Unfair Sales Act".

6. That the issuing of single trading stamps, in accord- [fol. 953] ance with the trading stamp contract, said trading stamps having a value not in excess of three percent of the purchase price of the merchandise, constitutes a discount for the prompt payment of cash, which discount does not reduce the price in violation of the Oklahoma "Unfair Sales Act".

NOW, THEREFORE, BY REASON OF THE LAW AND THE FINDINGS AFORESAID:

IT IS HEREBY ORDERED, ADJUDGED and DECREED by the Court that the defendant, Safeway Stores, Inc., a foreign corporation, and the agents, servants, clerks, and employees of said defendant, and all persons acting by or under the authority of said defendant, be, and they are each hereby perpetually enjoined and restrained from advertising for sale, offering for sale, and selling, at retail, any items of merchandise handled by defendant, in or through any of the stores of said defendant within the State of Oklahoma, at prices which are less than cost to the retailer as defined in the Oklahoma "Unfair Sales Act" and in violation of the provisions of said "Unfair Sales Act", except to meet in good faith the prices of competitors who are selling the same articles or products of comparable quality at cost to them as retailers as defined in the Oklahoma "Unfair Sales Act", and except in instances of other ex-
[fol. 954] empted sales as provided in Section 598.6 of said Oklahoma "Unfair Sales Act".

It is further ORDERED, ADJUDGED and DECREED by the Court that said defendant, Safeway Stores, Inc., a foreign corporation, and the agents, servants, clerks and employees of said defendant, and all persons acting by or under the authority of said defendant, be, and they are each hereby perpetually enjoined and restrained from advertising the giving or issuance of, and giving or issuing, any trading stamps, cash register receipts, or other evidences of credit issued as a discount for prompt payment of cash, of a value in excess of three percent of the selling price of any merchandise handled by defendant, with the sale of any merchandise advertised for sale, offered for sale, or sold by said defendant at cost to the retailer as defined in the Oklahoma "Unfair Sales Act".

It is further ORDERED, ADJUDGED and DECREED by the Court that the defendant's application for a permanent injunction against the plaintiff, Louie J. Speed, Inc., d.b.a. Speed's Food Market #1, to enjoin said plaintiff from giving or issuing single trading stamps with articles of merchandise advertised or sold at cost to the retailer as

defined in the Oklahoma "Unfair Sales Act", be, and the same is hereby denied.

It is further ORDERED, ADJUDGED and DECREED by the Court that the plaintiff, Louie J. Speed, Inc., d.b.a. Speed's [fol. 955] Food Market #1, and the agents, servants, clerks, and employees of said plaintiff, and all persons acting by or under the authority of said plaintiff, be, and they are each hereby perpetually enjoined and restrained from advertising the giving or issuance of, and giving or issuing, any trading stamps, cash register receipts, or other evidences of credit issued as a discount for the prompt payment of cash, of a value in excess of three percent of the selling price of any merchandise handled by plaintiff, with the sale of any merchandise advertised for sale, offered for sale, or sold by plaintiff at cost to the retailer as defined in the Oklahoma "Unfair Sales Act".

It is further ORDERED by the Court that the plaintiff, Oklahoma Retail Grocers Association, Inc., a corporation, recover of the defendant, Safeway Stores, Inc., a foreign corporation, its costs in this action, taxed at $236.70.

To all of which findings, orders, judgment, and decree, the defendant EXCEPTS, and its EXCEPTIONS are allowed.

ENTERED in opne court on October 21st, 1955; and signed this 9th day of December, 1955.

F. B. H. SPELLMAN
F. B. H. SPELLMAN
Assigned District Judge.

[fol. 994]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA

COURT CLERK'S ENTRIES AND MINUTES

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Aug. 2 Ent—case comes on for hearing & parties present by counsel. Leave given pltf. to withdraw amendment to Petition.

. . . . . .

[fol. 995]

IN THE DISTRICT COURT WITHIN AND FOR OKLAHOMA COUNTY
STATE OF OKLAHOMA

[Title omitted]

CERTIFICATE OF ATTORNEYS FOR DEFENDANT—March 27, 1956

We hereby certify that the within and foregoing Case-Made, consisting of Three (3) Volumes, Volume I containing pages 1 to 509, both inclusive, Volume II containing pages 509-a to 996, both inclusive, and Volume III being the "Exhibit Volume, containing Twenty-six (26) Sections, numbered from 1 to 26, both inclusive, contains a full, true, correct and complete copy and transcript of all the proceedings in this cause, including all pertinent pleadings filed, all the evidence offered or introduced, all orders and ruling made by the Court during the trial of said cause and exceptions thereto taken and allowed, and all of the record upon which the judgment in said cause was made and entered, and that the same is a full, true, correct and complete Case-Made, as shown by said Volumes I, II, and III, above referred to.

[fol. 996] Witness our hands this the 27th day of March, 1956.

EMBRY, CROWE, TOLBERT, BOXLEY & JOHNSON,

By: /s/ JOHN W. SWINFORD
Attorneys for Defendant.

[fol. 997]

IN THE DISTRICT COURT WITHIN AND FOR OKLAHOMA COUNTY
STATE OF OKLAHOMA

[Title omitted]

TENDER OF CASE-MADE

To the above-named Plaintiff, Louie J. Speed, Inc. and MISKOVSKY & MISKOVSKY, and LOONEY, WATTS, ROSS, LOONEY & NICHOLS, and MR. W. J. HOLLOWAY, SR., its Attorneys of record:

The above and foregoing Case-Made, consisting of Three (3) Volumes, Volume I containing pages 1 to 509, both inclusive, and Volume II containing pages 509-a to 996, both inclusive, and Volume III, being the "Exhibit Volume" containing Twenty-six (26) Sections, numbered from 1 to 26, both inclusive, is hereby tendered to, and served upon you, and each of you, as a true and correct Case-Made in the above entitled cause, and as a true and correct statement and complete record and transcript of all pertinent pleadings, motions, demurrers, testimony and evidence, orders, findings, judgments, exceptions taken and allowed, and all proceedings heretofore had in the above entitled [fol. 998] cause, on this the 27th day of March, 1956.

EMBRY, CROWE, TOLBERT, BOXLEY & JOHNSON

By: /s/ JOHN W. SWINFORD

Attorneys for Appellant,
Defendant above named.

ACCEPTANCE OF SERVICE OF CASE-MADE

We, the undersigned, Attorneys of record for the Plaintiff above named Louie J. Speed, Inc., hereby accept and aeknowledge service of the above and foregoing Case-Made upon us, on this the 27th day of March, 1956.

MISKOVSKY & MISKOVSKY

By: /s/ GEORGE MISKOVSKY

LOONEY, WATTS, ROSS, LOONEY & NICHOLS

By: /s/ C. J. WATTS

/s/ W. J. HOLLOWAY, SR.
W. J. Holloway, Sr.

Attorneys for Appellee,
Plaintiff above named.

[fol. 999]

IN THE DISTRICT COURT WITHIN AND FOR OKLAHOMA COUNTY
STATE OF OKLAHOMA

[Title omitted]

STIPULATION OF ATTORNEYS—April 9, 1956

We, the undersigned, Attorneys of record for the above named Defendant, and the undersigned attorneys of record for the above named Plaintiff, do hereby stipulate and agree that the foregoing Case-Made, consisting of Three (3) Volumes, Volume I containing pages 1 to 509, both inclusive, Volume II containing pages 509-a to 996, both inclusive, and Volume III, being the "Exhibit Volume", containing Twenty-six (26) Sections, numbered from 1 to 26, both inclusive, contains a full, true and complete and correct copy and transcript of all pertinent proceedings in this cause, all the testimony and evidence offered and introduced, all the orders and rulings made by the Court, and the exceptions thereto taken and allowed by either or any party, and all of the record upon which the judgment in said cause was rendered, and the same is a full, true and correct Case-Made; and the Plaintiff waives the right to suggest amendments to said Case-Made, and hereby con-
[fol. 1000] sents that the same may be settled and signed immediately and without notice, and hereby joins in the request that the Judge who presided at the trial of this cause, settle this Case-Made and order the same certified to the Clerk of the Supreme Court of the State of Oklahoma.

Witness our hands on this 9th day of April, 1956.

EMBRY, CROWE, TOLBERT, BOXLEY & JOHNSON

By: /s/ V. P. CROWE
Attorneys for Appellant,
Defendant above named.

MISKOVSKY & MISKOVSKY

By: /s/ GEORGE MISKOVSKY

Looney, Watts, Ross, Looney & Nichols

By: /s/ C. J. Watts

/s/ W. J. Holloway
W. J. Holloway, Sr.

Attorneys for Appellee,
Plaintiff above named.

[fol. 1001]

In the District Court Within and for Oklahoma County
State of Oklahoma

[Title omitted]

Notice of Settlement of Case-Made

To Miskovsky & Miskovsky, and Looney, Watts, Ross, Looney & Nichols, and W. J. Holloway, Sr., Attorneys for the above named Plaintiff:

You are hereby notified that on the ..... day of ....., 1956, at ..... o'clock .... M., or as soon thereafter on said day as counsel can be heard, the Case-Made in the above entitled cause, consisting of Three (3) Volumes, with any amendments thereto suggested by you, will be presented to the Honorable F. B. H. Spellman, Assigned Judge of the District Court within and for Oklahoma County, Oklahoma, who presided at the trial of this cause, at Chambers in the City of ....., Oklahoma, for settlement.

Dated this ..... day of ....., 1956.

Embry, Crowe, Tolbert, Boxley & Johnson

By: .....
Attorneys for Appellant, Defendant above.

[fol. 1002]

IN THE DISTRICT COURT WITHIN AND FOR OKLAHOMA COUNTY
STATE OF OKLAHOMA

[Title omitted]

ACCEPTANCE OF SERVICE OF NOTICE OF SETTLEMENT OF CASE-MADE

Service of the within and foregoing Notice of Settlement of Case-Made in the above-entitled cause is hereby accepted this the 9th day of April, 1956.

MISKOVSKY & MISKOVSLY,

By: /s/ GEORGE MISKOVSKY

LOONEY, WATTS, ROSS, LOONEY & NICHOLS,

By: /s/ C. J. WATTS

/s/ W. J. HOLLOWAY
W. J. Holloway, Sr.

Attorneys for Appellee,
Plaintiff above named.

[fol. 1003]

IN THE DISTRICT COURT WITHIN AND FOR OKLAHOMA COUNTY
STATE OF OKLAHOMA

[Title omitted]

CERTIFICATE OF SETTLEMENT OF CASE-MADE (Trial Judge)—Filed April 12, 1956

I, the undersigned, Judge of the Fourth Judicial District of Oklahoma, and Assigned Judge of the District Court of Oklahoma County, Oklahoma, do hereby certify that the above and foregoing Case-Made, consisting of THREE (3) VOLUMES, Volume I containing pages 1 to 509, both inclusive, Volume II containing pages 509-a to 996, both inclusive, and Volume III, being the "Exhibit Volume" containing Twenty-six (26) Sections, numbered from 1 to 26, both inclusive, was presented to me as a Case-Made in the

above-entitled cause; the plaintiff appearing by MISKOVSKY & MISKOVSKY, and LOONEY, WATTS, ROSS, LOONEY & NICHOLS, and W. J. HOLLOWAY, SR., its attorneys of record, and the defendant appearing by EMBRY, CROWE, TOLBERT, BOXLEY & JOHNSON, its attorneys of record;

(Suggested Amendments)—(Attach sheets following this page):

[fol. 1004] The said Plaintiff having presented its amendments to this Case-Made, as last above described, and said Case-Made having been duly examined and amended by me, in accordance with the above-subbested amendments, if any, I hereby certify that this Case-Made is now a true and correct statement and complete transcript, and contains all the pertinent pleadings, all of the evidence, offers of evidence, demurrers, motions, objections, orders, rulings, findings, exceptions, the judgment of the Court, the Notice of Appeal, and all proceedings had in this cause upon which judgment was rendered therein.

WHEREFORE, I hereby sign and settle the same as a true and correct Case-Made, and direct that it be attested and filed by the Clerk of said Court.

Witness my hand at Oklahoma City, in Oklahoma County, Oklahoma, and within the 7th Judicial District of said State, on this the 12 day of April, 1956.

/s/ F. B. H. SPELLMAN
Assigned District Judge.

ATTEST:

/s/ DALE SMITH, Court Clerk

By /s/ DAN T. GRAY, Deputy
Court Clerk of Oklahoma County,
State of Oklahoma.

(Seal)

[File endorsement omitted]

PLAINTIFF'S EXHIBIT "C-2"

The kids are going back to school...

— SAFEWAY "BACK TO SCHOOL" SPECIALS —

Tuna 2 cans 23c
Tuna 2 cans 19c
Mixed Cheese 39c
Velveeta 2 lbs. 73c
Salad Dressing 47c
Mayonnaise 77c
Graham Crackers 34c
Vanilla Wafers 33c
Peanut Butter 35c
Preserves 27c
Preserves 33c
Blackberry Jelly 33c

A Safeway Super Special!
LUNCH BOX SANDWICH SPREAD 49c
Mellorine 34c
PEANUT BUTTER 45c

"The Perfect Partner of the Week"
JONATHAN CHIEF JUICY
APPLES 10¢

ONIONS 5c
Fresh Crisp Young
RADISHES 3 bunches 10c

Ritchen Craft
FLOUR
10 lb. bag 77c
25 lb. bag $1.79
50 lb. bag $3.55

New Low Price!
COFFEE
Mild, Rich Whole Bean, Regular Fresh-Mild and Mellow Blend 81¢
Mild, Rich Whole Bean, Regular Fresh, with the Aromatic Flavor 83¢

A Safeway Special!
MARSH-MALLOWS 10¢

BAKERITE 3 lbs. 69¢
BISCUITS 5¢

Peaches 39c
Peaches 39c
Pineapple 33c
Grape Juice 28c
Grapefruit Juice 21c
Orange Juice 2 for 27c
Grape Juice 2 for 39c
Tomato Juice 23c
Green Peas 10c
Green Beans 33c
Hominy 2 for 25c
Catsup 17c
Vanilla 35c
Instant Coffee 53c
Instant Coffee $1.39
Pancake Flour 17c
Shortening 3 lbs. 77c
Shortening 3 lbs. 91c
Yellow Meal 17c
White Meal 29c
White Meal 5 lbs. 43c
Cake Mix 35c
Cinnamon Rolls 33c
Salad Crackers 27c

Young Tender Pack
GREEN BEANS 2 for 29¢
U.S. No. 1 Idaho
POTATOES 10 lbs. 55¢

Candy Mix 25c
Marshmallows 29c
Beverages 6 for 59c
Milk 2 for 25c
Liquid Starch 18c
Liquid Starch 28c
Hamburger Prune 49c
Tuna 19c
Wax Paper 21c
Dog Food 2 for 19c
Dog Food 2 for 25c
Syrup 27c
Margarine 18c
Margarine 27c

NEW ANNUAL HOSIERY SALE
20% OFF
NEW Ipswich NYLONS
66 gauge 15 denier 77
60 gauge 15 denier 88

JELLO 5c
SUGAR 10 lbs. 89c
Orangeade 24c
PEACHES 25c

Wilson's Certified Super Cured Hickory Smoked Fully Trimmed, Small Size
SMOKED PICNICS lb. 35¢

Fresh Dressed and Drawn
HENS 39¢
Capon's Choice
PERCH FILLETS 29¢

Plain Layer
BACON 2 lbs. 73c
U.S. Inspected
BACON 55c
Cudahy Gold Coin
BACON 49c

Bacon Squares 39c
Ground Beef 39c
Ball Sausage 37c
Beef Liver 33c
Chuck Roast 35c
Rolled Steak 59c
Bologna 39c
Cheese 39c
Canned Pickles 29c

NEW WORLD FAMILY
ENCYCLOPEDIA
STAKE YOUR SET TODAY
28 Complete Volumes
Deluxe Edition
Get a Complete Set of 20 Volumes On Safeway's Easy BOOK-A-WEEK PLAN!
Introductory Offer to Start Your Set
Don't Delay — Start Your Set Now!
Volume No. 3 On Sale Now
89¢

Silver Anniversary
SAFEWAY

Plaintiff's Exhibit "C-4"

Phenix City Elects Reform Candidate

Republicans Hit Fund for Gary

At Your Favorite Independent Grocer

A & A CAB CO.
3778

C & R

Guided Missile Will Be Shown In Weapons Display at Fair

It's Here

The New Rush Rambler Cross Country now with your-hand Air Conditioning

Agencies of State Get Cut-Rate Tires

MODERN 2-PIECE SECTIONALS

at surprisingly low prices!

$169.50

FOR CASH SAVINGS AS YOU GO

GO SAFEWAY ON WED.

TOKAY GRAPES 2 lbs. 15¢	PLATE RIBS lb. 10¢
APPLES 3 lbs. 29¢	ROUND STEAK lb. 49¢
ORANGE JUICE . . . . . 2 ... 27c	
FRESH BREAD . . . . . 2 ... 29c	
PEAS . 2 ... 15c	BISCUITS 3 ... 23c
PEACHES 4 ...	SUGAR 10 ... 89c
COFFEE ... 93¢ 2 ...	MARGARINE ... 19¢
COFFEE 98c	CHIPS 29c
PIE CHERRIES . . . . . 5 ...	
TEA ... 29¢ ... 57¢	TISSUE 11c
DRESSING ... 33¢	MIRACLE WHIP ... 32¢ ... 56¢
APPLE SAUCE 2 ... 31c	TOMATOES 11c
CHEESE FOOD 2 ... 49c	MELLORINE 43c

PLAINTIFF'S EXHIBIT "C-6"

THE DAILY OKLAHOMAN

15 Cattle Are Killed In Truck Collision

Pete the Python Gets Last Hiss As Peace Quits

Parking Meter Ad Contract Approved

HERE'S THAT CHANCE OF A LIFETIME

Nonexistent Purple Cow to Be at Fair

Prominent City Attorney Killed In Car Accident

Noted Catholic Chaplain Dies; Mass Is Friday

We Are DETERMINED TO, AND WILL MEET, (Subject to Limitations of the Law) THE PRICES ON All Items ADVERTISED AND SOLD BY Competitive Stores.

The Prices on Many of the Items in this Ad Have Been Lowered Sufficiently to Offset the Value of

DOUBLE TRADING STAMPS On Wednesdays.

If You Prefer CASH SAVINGS As You Go—GO SAFEWAY

HOSE 61c 71c

Sugar	10 97c	Corn	14c
Flour	5 48c	Gerbers	3 23c
Milnot	3 27c	Chili	35c
Crisco	3 90c	Dog Food	2 31c
Tide	69c	Kleenex	12c

SALAD DRESSING 53c

ROYAL SATIN 3 84c

Rain-Date SNAILS 15c

Jelly		21c
Juice	2	21c
Peaches		41c
Pineapple		27c
Tomatoes		23c

TEA 25c 28c

CHEEZ WHIZ 46c

Kraft's MIRACLE WHIP SPREAD 35c

Silver Anniversary SAFEWAY

Uncle Ray's Corner

Public Records

City Youths Arrested On Stolen Car Charge

Big Red Is Praised For Opening Eyes

Billy Graham Film To Be Shown Here

PLAINTIFF'S EXHIBIT "C-9"

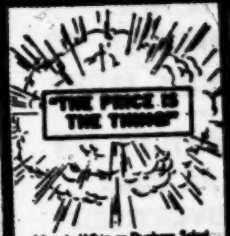
Good Morning

Monetary Fund Expels Czechs For Refusing Record Check

Women to Start Their 'Big One' Canvass Today

News from the STATE in Brief

Farm Bureau Chief To Speak In Beaver



Miracle Whip or Duchess Salad
DRESSING
Full Quart 53c

Polly Ann Orange Bar
LAYER CAKE
Regular 25c Size 21c

BABY FOOD
3 4½-oz. Cans 23c

For Cash Savings as You Go, GO SAFEWAY!

DON'T BE MISLED!

Safeway Chose, a Long Time Ago, To Do Business in a way That Would Give You, Our Customer, "CASH SAVINGS AS YOU GO", Instead of TRADING STAMPS And other costly Frills. We Are Determined to Continue to Meet The LOWEST PRICES on All Items Advertised and Sold By Competitive Stores. So if you Want

CASH SAVINGS AS YOU GO—INSTEAD OF TRADING STAMPS—

GO SAFEWAY!

The Prices on Many of the Items In This Ad Have Been Reduced Substantially to Reflect the Value of DOUBLE TRADING STAMPS ON WEDNESDAY

PLAY BALL!

WATCH THE WORLD SERIES ON YOUR

"New For '55"

21" FULL RANGE

Westinghouse TV

At a New LOW PRICE—ONLY..... $169.95

Westinghouse

ACE APPLIANCE CO.

Introductry Offer

Ipswich NYLON HOSE

50 Gauge 15 Denier 59c

60 Gauge 15 Denier 69c

Guaranteed To Please You Or Your Money Back

— Check & Compare —

Sugar	10 lb.	95c
Flour	5 lb.	48c
Flour	5 lb.	48c
Crisco	3 lb.	90c
Milnot	3	27c
Oxydol		69c
Tide		69c
Fab		69c
Kleenex		12c

DOG FOOD 2 lb. 31c

NOB HILL 1 lb. $1

SPREAD 35c

ROYAL SATIN 3 lb. 84c

Juice	2	21c	Tea		25c
Peaches		41c	Tea		28c
Pineapple		27c	Corn		14c
Jelly		21c	Chili		35c
Cheez Whiz		46c	Tomatoes		23c

We Reserve the Right to Limit Quantities

Silver Anniversary

SAFEWAY

[fol. 1009]

PLAINTIFF'S EXHIBIT "C-14"

THE DAILY OKLAHOMAN

Good Morning

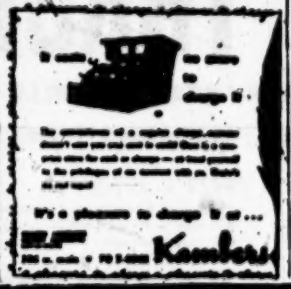
Bridge 60 Days Off Schedule

Another Good-Will Trip Is Announced By Gov. Murray

Church to Open Bids at Meeting

Police Help Family In Search for Son Missing in Texas

Pictures of Building



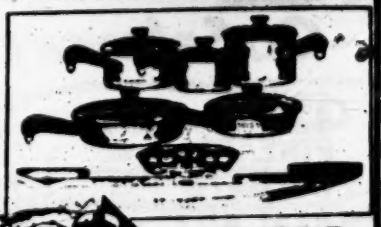
We're pleasure to charge it at... Kambers

American Announces MORNING DC-6 SERVICE TO CHICAGO AND NEW YORK

LV. OKLAHOMA CITY	8:40 AM
AR. CHICAGO	11:35 AM
AR. NEW YORK	3:40 PM

AMERICAN AIRLINES INC.
American Leading Airline

RASKINS BRINGS YOU a LIFETIME of COOKING Pleasure



REVERE WARE

11 PURPOSE SET

Only $1.00 down $1 A WEEK 39.95 complete

Give yourself a lifetime of cooking pleasure ... and your family the best-tasting meals ever!

Never An Interest Or Carrying Charge At Raskins

RASKINS

When You See This Statement In An Ad—

"TRADING STAMPS AT NO EXTRA COST"

DON'T YOU BELIEVE IT!

See Safeway's NEW TELEVISION SHOW KWTV Channel 9 Thurs. Nights 9 To 9:30

Meet Corliss Archer

Home Grown Fresh TURNIPS & TOPS Bunch 10c

Sugar	10 lbs. 95c	Oxydol	69c
Flour	5 lbs. 48c	Kleenex	12c
Minnet	3 lbs. 27c	Colgate	26c
Crisco	3 lbs. 90c	Aspirin	11c
Dressing	53c	Aspirin	20c
Dressing	53c		
Cheese Whiz	46c		

Fully Iced Fresh JELLY ROLLS 23c

Gerber's Strained BABY FOOD 3 for 23c

ROYAL SATIN 3 lbs. 84c

Calumet Dog Meal DOG FOOD 2 lbs. 31c

Seamless Nylon HOSE 59c 69c

Silver Anniversary SAFEWAY

[fol. 1010]

PLAINTIFF'S EXHIBIT "D"

Whether you save trading stamps or not, if you buy food in Oklahoma City, we think you'll be interested in this vital message...

STRAIGHT TALK ABOUT TRADING STAMPS

WHEN ANY MERCHANT TELLS YOU THAT HE ABSORBS THE ENTIRE COST OF THE TRADING STAMP HE "GIVES" DON'T YOU BELIEVE IT!

Here's Why:

Who pays all the costs of any business that makes a profit? ..... THE CUSTOMER
Who pays for the merchandise? ..... THE CUSTOMER
Who pays for the rent? ..... THE CUSTOMER
Who pays the salaries? ..... THE CUSTOMER
Who pays all the other costs of doing business? ..... THE CUSTOMER

THE CUSTOMER ALWAYS PAYS ALL COSTS OF EVERY SUCCESSFUL BUSINESS

[illegible]

[illegible] SAFEWAY STORES, Incorporated

For Cash Savings as You Go—Go Safeway!

Prices Listed Here Are Sufficiently Low To Offset the Value of "Double" Trading Stamps Customarily Given by Some Merchants on Wednesday only.

TIDE	Powdered Detergent	Gen. Pkg. 69c	NIBLETS	Whole Grain Corn	12-oz. Can 16c	ASPIRIN	Genuine Bayer 24 Count	20c
JOY	Liquid Detergent	Gen. Pkg. 67c	CRISCO	Shortening 3	lb. Can 88c	PINEAPPLE	Hawaiian Wood	No. 2 Can 27c
OXYDOL	Powdered Detergent	Gen. Pkg. 69c	VELVEETA	Cheese Food 2	lb. Ctn. 75c	COLGATE	Tooth Paste	[illegible]
CHEER	Powdered Detergent	Gen. Pkg. 69c	BREEZE	Cheese Food 2	lb. Ctn. 64c	REAL KILL	Insecticide	[illegible]
FAB	Powdered Detergent	Gen. Pkg. 69c	BISCUITS	Dolly Mix or Pillsbury	Can 8c	CHEEZE WHIZ	Cheese Spread	16-oz. Jar 46c

It Whips MILNOT Full Can 9c	Duchess or MIRACLE WHIP Salad Dressing Full Quart 51c	Gerber's BABY FOODS 3 4½-oz. Cans 23c	C & H Pure Cane SUGAR 10 lb. Pkg. 92c	Wilson's CORN KING BACON Layer Sliced 53c	Wilson's Certified SKINLESS WIENERS With Autographed Color Photo of Famous Big League Ball Player lb. Pkg. 45c

Prices Effective in Oklahoma City & Midwest City, Wed. July 21st. Right Reserved To Limit Quantities

Polly Ann Almond Filled COFFEE CAKE Wednesday Thursday Friday Saturday 7-oz. Cake 19c

Silver Anniversary SAFEWAY

U.S. Cons. Gov't. Graded Hearty Calf ROUND STEAK Cons. Cuts lb. 59c

PLAINTIFF'S EXHIBIT "PACKED WERE [illegible] THE PETITION"

[fol. 1011]

PLAINTIFF'S EXHIBIT "E"

REPORTER'S NOTE:

Plaintiff's Exhibit "E", consists of the entire Court File in Case No. 133,847 in the District Court of Oklahoma County, Oklahoma, styled, Oklahoma Retail Grocers Association, inc., a corporation, Plaintiff, vs. Safeway Stores, Inc., a foreign corporation, Defendant and is as follows:

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

No. 133,847.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC.,
a corporation,

Plaintiff,

vs.

SAFEWAY STORES, INC., a foreign corporation,

Defendant.

PETITION

Comes now the plaintiff, Oklahoma Retail Grocers Association, Inc., a corporation, and, for cause of action against the defendant, Safeway Stores, Inc., a foreign corporation, alleges and states:

1. That the plaintiff, Oklahoma Retail Grocers Associa-
[fol. 1012] tion, Inc., is a duly organized and existing trade association, incorporated under and according to the laws of the State of Oklahoma, with its principal place of business being located at 318 American National Building, in Oklahoma City, Oklahoma, and duly authorized and licensed by the laws of this State to conduct the business of a retail grocery association within the State of Oklahoma. That this cause is instituted for the purpose of obtaining a temporary and permanent injunction, and a temporary restraining order, for costs, and other proper and equitable

relief, provided for under the terms of the "Unfair Sales Act", set out in Oklahoma Statutes Annotated, Title 15, Sections 598.1 to and including 598.11; and that plaintiff prosecutes this cause as the real party in interest, for and on behalf of the Association's members doing business in the County of Oklahoma, and State of Oklahoma; that the acts of the defendant hereinafter complained of constitute a violation of the said "Unfair Sales Act", and said acts of defendant directly affect, and threaten to irreparably damage and injure the plaintiff and the members of plaintiff Association, and to impair fair competition, and otherwise adversely affect the members of the plaintiff Association, as in said "Unfair Sales Act" provided.

That this cause is instituted for the benefit and protection of plaintiff and the members of plaintiff Association.

[fol. 1013] 2. That the defendant, Safeway Stores, Inc., is a foreign corporation, organized under and by virtue of the laws of the State of Maryland, and authorized to do business within the State of Oklahoma, and having places of business within the State of Oklahoma, and Oklahoma County, in and adjacent to Oklahoma City and Midwest City.

3. That the defendant, Safeway Stores, Inc., at all times herein mentioned, was and is now operating general retail grocery outlets located in Oklahoma City and Midwest City, in Oklahoma County, State of Oklahoma, at which retail grocery outlet stores the said defendant advertises for sale, offers for sale, and sells, at retail, various and sundry items of merchandise, including dry groceries, dairy products, meats, fruits, and vegetables.

4. That the defendant did, on the date hereinafter set out, in violation of said "Unfair Sales Act", advertise for sale, offer for sale, and sell, at retail, certain articles of merchandise at less than cost to the retailer, as defined in said "Unfair Sales Act"; and that the advertising and offering for sale, and sales, by defendant, hereinafter more specifically described, were in violation of the terms, restrictions, and provisions contained in said "Unfair Sales Act".

Plaintiff specifically alleges that the defendant advertised for sale, offered for sale, and sold, at retail, articles [fol. 1014] of merchandise at less than cost to the retailer, as defined in said "Unfair Sales Act", and in violation of the terms, restrictions, and provisions contained in said Act, to-wit:

July 21st, 1954:

TIDE Powdered Detergent, Giant Package	$ .69
JOY Liquid Detergent, Giant Size	.67
OXYDOL, Powdered Detergent, Giant Package	.69
CHEER, Powdered Detergent, Giant Package	.69
FAB Powdered Detergent, Giant Package	.69
NIBLETS, Whole Grain Corn, 12-oz. Can	.16
CRISCO Shortening, 3 lb. Can	.88
VELVEETA Chees Food, 2 lb. Carton	.75
BISCUITS, Ballard's or Pillsbury, Can	.08
PINEAPPLE, Libby's Sliced, No. 2 Can	.27
CHEEZE WHIZ, 16 oz. Jar	.46
MILNOT, Tal Can	.09
DUCHESS or MIRACLE WHIP, Salad Dressing, Full Quart	.51
Gerber's BABY FOODS, 3 4½-oz. Cans	.23
C ¢ H Pure Cane SUGAR, 10 lb. Bag	.92
Wilson's Corn King BACON, Layer Sliced	.53

and the defendant has, by its acts and conduct, shown that it will continue to advertise for sale, offer for sale, and sell, at retail, the foregoing items of merchandise, and other items of merchandise handled by it in its said stores, at less than cost to the retailer, as defined in said "Unfair Sales Act", and in violation of the terms, restrictions, and provisions of said Act.

5. That the items advertised for sale, offered for sale, and sold by defendant, and referred to in paragraph numbered "4" above, were and are at less than cost as defined in said "Unfair Sales Act", and were advertised, offered [fol. 1015] for sale, and sold by the defendant with the intent and purpose of inducing the purchase of other merchandise, or of unfairly diverting trade from the members of plaintiff Association, who are competitors of said

defendant, or otherwise injuring said members of plaintiff Association, and with the intent and purpose of impairing and preventing fair competition, and injuring the public welfare; that the acts, and threatened acts of said defendant, herein complained of, constitute unfair competition and are contrary to public policy and the policy of said "Unfair Sales Act", and the result of such advertising, offering for sale, and selling, and the threatened advertising, offering for sale, and selling, by the defendant is to tend to deceive purchasers or prospective purchasers, or to substantially lessen competition, or to unreasonably restrain trade, and will tend to create a monopoly in the retail grocery business within the City of Oklahoma City and Midwest City, and adjacent thereto, in Oklahoma County, State of Oklahoma.

5. That the defendant corporation has threatened and is threatening to illegally continue to advertise for sale, offer for sale, and sell, at retail, the items of merchandise referred to herein, and other merchandise handled by it in its said stores, at less than cost as defined in said "Unfair Sales Act", and that the continuation of said advertising, [fol. 1016] offering for sale, and selling by the defendant will work great and irreparable damage to the plaintiff and the members of plaintiff Association, and will prevent fair competition, injure public welfare, substantially lessen competition, and unreasonably restrain trade, and otherwise violate the policy and terms of said "Unfair Sales Act"; and that the plaintiff and the members of plaintiff Association, for whose benefit this action is prosecuted, have no adequate rememdy at law.

WHEREFORE, plaintiff prays:

For a judgment against the defendant, perpetually enjoining and restraining said defendant from further violation of the terms, restrictions, provisions, and conditions of the said "Unfair Sales Act", set out in Oklahoma Statutes Annotated, Title 15, Sections 598.1 to and including 598.11; and from advertising for sale, offering for sale, and selling items of merchandise handled in said defendant's

establishments, including the items hereinabove referred to, at less than cost to the retailer as defined in said "Unfair Sales Act";

For the costs of this action; and.

For all other proper and equitable relief to which the Court may deem plaintiff entitled in the premises.

[fol. 1017] 7. Plaintiff further alleges that, unless the said defendant, and its agents, servants, and employees, is forthwith and without notice enjoined and restrained from doing and continuing to do said unlawful acts, the plaintiff and the members of plaintiff Association, who are the retail merchants of the City of Oklahoma City, Midwest City, and of Oklahoma County, will suffer irreparable damage and injury, for which they have no adequate remedy at law; and that the acts of defendant and continued violation of said "Unfair Sales Act", and threatened violation of the same, will cause trade to be unfairly diverted from the members of plaintiff Association, who are competitors of said defendant, and will otherwise injure plaintiff and the members of plaintiff association, and will impair and prevent fair competition within the City of Oklahoma and Midwest City, and Oklahoma County, and injure the public welfare, substantially lessen competition, and unreasonably restrain trade; and that, by reason thereof, this Court should restrain said defendant from further violation of said "Unfair Sales Act", by issuing, instanter and without notice, a temporary order of restraint against the said defendant, and its agents, servants, employees, and all persons acting by or under the aurhority of said defendant.

WHEREFORE, plaintiff prays:

[fol. 1018] That a temporary restraining order against the defendant be granted forthwith, and that the defendant, its agents, servants, employees, and all persons acting by or under the authority of said defendant, be forthwith and without notice, and upon the filing of this petition with the Clerk of the District Court of Oklahoma County, enjoined

and restrained from doing and continuing to do said unlawful acts herein complained of.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC.,
a corporation,
Plaintiff

By: MISKOVSKY and MISKOVSKY

By: GEORGE MISKOVSKY
GEORGE MISKOVSKY

Attorney for Plaintiff.

State of Oklahoma,)
Oklahoma County) : ss

L. O. BOWMAN, of lawful age, being duly sworn, upon his oath says:

That he is the Secretary of the Oklahoma Retail Grocers Association, Inc., a corporation, the plaintiff herein, and is authorized to make this affidavit; that he has read the within and foregoing petition, and that he knows the contents thereof; and that the allegations therein set out are [fol. 1019] true and correct.

L. O. BOWMAN
L. O. Bowman

Subscribed and sworn to before me this 21st day of July, 1954.

MERLE L. FISHER
Notary Public.

(SEAL)

My Commission Expires:
January 4th, 1957.

ENDORSED:

No. 133,847

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC.,
a corporation,
Plaintiff

vs.

SAFEWAY STORES, INC., a foreign corporation,
Defendant.

PETITION

FILED IN DISTRICT COURT
OKLAHOMA COUNTY, OKLA.
JUL 21 1954
CLIFF MYERS, Court Clerk,
By: DAN S. GRAY, Deputy.

138-547

MISKOVSKY & MISKOVSKY
Attorneys
Hightower Building
OKLAHOMA CITY 2, OKLAHOMA

[fol. 1020]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY,
STATE OF OKLAHOMA

No. 133847.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., a corporation,

Plaintiff,

vs.

SAFEWAY STORES, INC., a foreign corporation,

Defendant,

TEMPORARY RESTRAINING ORDER

THE STATE OF OKLAHOMA TO:

SAFEWAY STORES, INC., a foreign corporation:

This matter coming on for hearing before the undersigned Judge of the District Court within and for Oklahoma County, State of Oklahoma, upon the verified petition of the plaintiff filed herein;

And it appearing to the Court, from said petition, that said plaintiff and the members of plaintiff Association, for whose benefit this cause is prosecuted, will suffer irreparable damage and injury, and fair competition will be impaired and prevented, and public welfare injured, and trade unreasonably restrained, unless the defendant is forthwith and without notice restrained, and that the plaintiff, upon the facts alleged in said petition, is entitled to the relief [fol. 1021] prayed for:

IT IS HEREBY ORDERED, ADJUDGED and DECREED by the Court that the said defendant, Safeway Stores, Inc., a foreign corporation, operating general retail grocery outlet stores in or adjacent to Oklahoma City and Midwest City, in Oklahoma County, State of Oklahoma, its agents, servants, employees, and all persons acting by or under its aurhority, be, and they are each hereby enjoined and re-

strained from advertising for sale, offering for sale, and selling, at retail, any items of merchandise handled by said defendant corporation in its establishments, or through its establishments in or adjacent to Oklahoma City and Midwest City, in Oklahoma County, State of Oklahoma, at prices claimed to be based on meeting prices which include an allowance for Green Stamps, and *at* (A.P.V.) less than cost as defined in the "Unfair Sales Act", set out in Oklahoma Statutes Annotated, Title 15, Sections 598.1 to and including 598.11, until August 23rd, 1954.

It is further ORDERED by the Court that the application of the plaintiff for a temporary injunction be, and the same is hereby set for hearing, before the Judge to whom this case is regularly assigned, at the District Court Room of said Judge, in the County Court House Building, in the City of Oklahoma City, State of Oklahoma, on the 23rd day of [fol. 1022] August, 1954, at 9:00 A.M., and that notice thereof be given to the said defendant at least five (5) days prior to the date of said hearing.

HEREOF FAIL NOT UNDER PENALTY OF LAW.

Dated this 28th day of July, 1954.

A. P. VAN METER
District Judge.

* * * * * * *

[fol. 1023] ENDORSED:

* * * * * * *

FILED IN DISTRICT COURT
OKLAHOMA COUNTY, OKLA
AUG 2 1954
CLIFF MYERS, Court Clerk,
By: B. M. , Deputy.

Book 519, Page 593-594.

[fol. 1024]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY,
STATE OF OKLAHOMA

No. 133,847

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., a corporation,
Plaintiff,

vs.

SAFEWAY STORES, INCORPORATED, a foreign corporation,
Defendant.

DISMISSAL WITHOUT PREJUDICE

COMES now the above plaintiff and dismisses this action without prejudice.

W. J. HOLLOWAY

LOONEY, WATTS, ROSS, LOONEY & NICHOLS

MISKOVSKY & MISKOVSKY

By GEO. MISKOVSKY
Attorneys for Plaintiff.

Filed in District Court, Oklahoma County, Oklahoma
August 31, 1954

* * * * * * *

[fol. 1025] CLERK'S MINUTES

SHEET NO. .....

133847

JUDGE VAN METER OKLAHOMA COUNTY AUGUST 27, 1954.

OKLAHOMA RETAIL GROCERS' ASSN.

vs.

SAFEWAY STORES, INC.

Ent: Case comes on for oral argument pursuant to adjournment. Counsel all present, case orally argued and submitted. Application for temporary injunction granted. Temporary injunction to be entered upon posting $7,000.00 bond, restraining order continued in force until September 1, 1954. Bond to be posted by September 1, 1954, all per J. E.

Van Meter

August 31, 1954.

Filed Dismissal.

I, DALE SMITH, Court Clerk for Oklahoma County, Okla. hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the District Court Clerk's Office of Oklahoma County, Okla., this 29 day of Sept., 1955.

DALE SMITH, Court Clerk,

By: W. H. REGAN, Deputy.

(Seal)

[fol. 1026]

REPORTER'S NOTE RE PLAINTIFF'S EXHIBIT F-1 AND F-2

REPORTER'S NOTE:

Plaintiff's Exhibit F-1 is "TRANSCRIPT OF PROCEEDINGS HAD ON AUGUST 23, 24, 1954 BEFORE HON. A. P. VAN METER, DISTRICT JUDGE", In the District Court of Oklahoma County, State of Oklahoma, in Case No. 133,847, styled, Oklahoma Retail Grocers Association, Inc., a corporation, Plaintiff, vs. Safeway Stores, Incorporated, a foreign corporation, Defendant, containing 217 pages.

Plaintiff's Exhibit F-2 is "TRANSCRIPT OF PROCEEDINGS HAD ON AUGUST 24, 1954, BEFORE HON. A. P. VAN METER, DISTRICT JUDGE", In the District Court of Oklahoma County, State of Oklahoma, in Case No. 133,847, styled Oklahoma Retail Grocers Association, Inc., a corporation, Plaintiff, vs. Safe-

way Stores, Incorporated, a foreign corporation, Defendant, containing 85 pages.

Plaintiff's Exhibit F-1 and Plaintiff's Exhibit F-2, are omitted from this record, and not copied herein, upon agreement of counsel for both plaintiff and defendant in the case in which this record is made, to-wit, Case No. 134,533 in the District Court of Oklahoma County, Oklahoma, styled, Oklahoma Retail Grocers Association, Inc., a corporation, Plaintiff, vs. Safeway Stores, Incorporated, a foreign corporation, defendant.

[fol. 1027]

PLAINTIFF'S EXHIBIT "G"

STIPULATION

It is Stipulated and Agreed that as to Exhibits "C" to "O", inclusive, to the Defendant's Cross-Petition, that the members of the Thrif-T-Wise group and the I.G.A. group, Safeway, Standard Humpty-Dumpty, Kiespert, Dickey, and others mentioned in the exhibits in the Oklahoma City area, on the days mentioned in the exhibits, sold the articles of merchandise set forth therein at approximately the prices in said exhibits set opposite the articles; and that the price at which the members of the Thrif-T-Wise organization and the I.G.A. organization, and the others mentioned in the exhibits sold the items mentioned in those exhibits were each and all at or near the minimum price at which such articles could be sold under the Oklahoma Unfair Sales Act; that on the dates in question, on Wednesdays, the members of the Thrif-T-Wise organization and the plaintiff, Speed, gave double stamps with the sale of such items and on every other day in the week they gave single trading stamps with such minimum priced items; if the stamps, valued at not less than 2.5%, had the effect of reducing the sales price at which the items were sold, then the resultant sales prices were less than the minimum allowed by the Oklahoma Unfair Sales Act.

[fol. 1028]

PLAINTIFF'S EXHIBIT "H"

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 6471—Civil

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., a corporation,

Plaintiff,

vs.

SAFEWAY STORES, INC., a foreign corporation,

Defendant.

AFFIDAVIT IN OPPOSITION TO MOTION TO REMAND

STATE OF OKLAHOMA)
) SS.
OKLAHOMA COUNTY)

J. A. MITCHELL of lawful age, being first duly sworn, deposes and says:

That I am a Division Staff Member of Safeway Stores, Incorporated, with offices in Oklahoma City, Oklahoma, and am employed as a statistician doing sales analysis work for the Executive Officers of the Oklahoma City District. That as such, I have access to books and records of Safeway and in addition thereto, statistical data published by various trade magazines and services from which I can compute the changes which occur in the food business in this area and the competitive position of Safeway.

That Safeway operates 85 retail grocery stores in 26 [fol. 1029] cities and towns within the State of Oklahoma. That it is now and has been for several years past, selling approximately 17½% of the total food products sold at retail within the State of Oklahoma. That the members of plaintiff Association sell over 30% of the said products.

The total weekly sales of food products in the State of Oklahoma exceeds $8,000,000 and the total gross sales with-

in the counties in which Safeway does business, is approximately $7,534,250. That an average and normal gross profit on the sale of food products is 15%. Because of the magnitude of the food business and the high percentage of the weekly income that is expended for food, a diversion of less than .004 in profits in favor of Safeway will produce $3,000. This is illustrated by the following figures:

Total State Weekly Food Sales	$7,534,250
Gross Profit at 15%	1,130,137
Gross Profit Other than Safeway	895,069
Diversion of 2%	17,901
Diversion of .4%	3,580

Conversely, the foregoing figures show that Safeway receives a weekly profit of the difference between competitors' profit of $895,069 and the total of $1,130,137 or $235,068 based upon the average markup of 15%. If the diversion is away from Safeway and in favor of its competitors, a change of less than 1½% will result in a loss of profits to Safeway of $3,500 in one week's time.

In the retail food business, a loss in trade which does [fol. 1030] not equal or exceed 10%, will not result in a corresponding reduction in the cost of doing business. The reason for this is that the fixed expenses of doing business remain constant in the face of minor fluctuations in volume so the result is that any loss in gross profits will reduce net profit in the same amount.

In the foregoing illustration, I have dealt with total food sales, including all items handled by Safeway and its competitors, for the reason that the total volume of all items offered for sale will follow closely the sales of the more popular items which are known in the trade as "traffic items". The word "traffic" has its origin in the fact that certain food products such as sugar, flour, coffee, soap and others are the items most frequently purchased by the housewife and therefore have a rapid turnover. Because of the frequency with which the housewife purchases these particular items, she is thoroughly familiar with the prices charged therefor and will generally do most of her marketing where the prices on these particular items are the

lowest. As a result of this, a retailer who cannot remain competitive as to traffic items, cannot hope to build up or retain a high volume of sales in other items regardless of the prices charged therefor.

Even if the inquiry is limited to the traffic items set forth in plaintiff's petition however, a very small diversion will produce $3,000 in a very short time. In order to present [fol. 1031] the most conservative view of the amount involved in this action, I have computed the cost of the traffic items set forth in plaintiff's petition, based upon the average sale of these items in an average week in the specific towns complained of, which are Oklahoma City, Tulsa, Shawnee, Norman and Enid. By applying the minimum markup of 6% to these items in these five towns, it is possible to determine how long it will take to produce a profit or loss of $3,000 depending upon the per cent of diversion which takes place.

SALES:

Cost to Safeway of these items:	$ 41,354	
Cost to Competitors of these items:	194,948	
Total (5 towns)		$236,302 weekly

PROFIT:

On Safeway Sales at 6% markon:	$ 2,481	
On Competitor's Sales at 6% markon:	11,697	
Total profit at 6% markon (5 towns)		$ 14,178 weekly

NUMBER OF WEEKS TO DIVERT $3,000 OF GROSS PROFITS FROM SAFEWAY TO COMPETITORS:

At 5%	24.2 weeks
At 10%	12.1 weeks
At 47%	.5 week

NUMBER OF WEEKS TO DIVERT $3,000 OF GROSS PROFITS FROM COMPETITORS TO SAFEWAY:

At 5%	5.1 weeks
At 10%	2.6 weeks
At 47%	.5 weeks

In order to demonstrate the diversion which has occurred during the period in question, I have selected the town of [fol. 1032] Enid as a pilot, for the reason that Safeway's volume in that area, as compared with that of its competitors, is approximately the same as it is on a statewide basis and for the further reason that this is one of the few towns in the State where competition continued to sell below the minimum price fixed by the Unfair Sales Act after Safeway was placed under a restraining order on October 26, 1954. Safeway is specifically charged in plaintiff's petition with the sale below statutory cost at Enid, Oklahoma, of the following items:

> Hi C Orangade, Del Monte Catsup, Carnation Milk, Pet Milk, Milnot, Tide, Folger Coffee, Miracle Whip, Jello (all flavors), Crisco, Bakerite, Beet Sugar, Powdered Sugar, Brown Sugar and Northern Tissue.

The average weekly loss of sales by Safeway on the above items in its stores at Enid, Oklahoma, during the 7-week period following the issuance of the restraining order as compared with the 15-week period preceding such order, is demonstrated by the following table:

	Average Weekly Dollar Sales—July 24 to October 30	Average Weekly Dollar Sales—November 6 to December 18	Percentage of Decrease
Store "A"	$2866.87	$1437.29	49.87
Store "B"	$2064.08	$1161.94	43.70
Both Stores	$4930.95	$2599.23	47.29

[fol. 1033] Safeway has at this time, within the State of Oklahoma, a capital investment of more than $7,000,000 which does not illustrate the magniture of its business in the State because of its policy of leasing, rather than owning,

the store buildings and other properties necessary to its distribution system. The annual gross sales by Safeway in Oklahoma are over $60,000,000 and Safeway's good will has a present and salable value of in excess of $5,000,000. In the absence of an actual sale, the value of the good will of any given business may be shown in a number of ways, but a rule of thumb applicable to the retail trade is 10% of the annual gross sales. In other words, a prospective purchaser should be willing to pay as much as $6,000,000 over and above the value of the capital assets or physical plant in order to secure a going business capable of producing annual sales of $60,000,000. If these gross sales figure diminishes due to Safeway's inability to remain competitive as to prices, the value of the good will will diminish accordingly.

The value of good will of any business is determined by many factors including good merchandise, fair prices and services performed by the retailer in behalf of its customers in order to retain their patronage. Safeway relies primarily upon good merchandise at low prices to the exclusion of additional services which are furnished by many of its competitors. To a large extent, Safeway's good will depends [fol. 1034] entirely upon its merchandising methods which are designed to produce low prices which are competitive in every area which it serves.

In order to supplement these merchandising methods and familiarize the general public with them, Safeway spends approximately ¾ths of a million dollars annually within the State of Oklahoma in direct advertising costs. This is an investment in its good will and a recurring annual expense representing a direct and immediate loss if the good will is damaged or impaired. In order to show the distribution of these advertising costs, I have allocated them to the five specific towns complained of, as follows:

Statewide	$734,056
Oklahoma City District	183,326
Norman	6,240
Shawnee	7,116
Enid	24,000
Tulsa	156,254
Total—5 towns	$376,936

The highly competitive nature of the grocery business and the instability of patronage in the face of fluctuating prices is illustrated by comparing Safeway's sales of certain traffic items on Wednesday, July 21, 1954, when the competitive prices of its competitors were met by Safeway with the average sale of these items on the same day of the week. During a representative twelve-week period ending July 19, 1954, the average weekly sale of the foregoing items by Safeway was $6,038.78 and the average sales on Wednesday of [fol. 1035] each week during such period was $631.66. On Wednesday, July 21, 1954, by meeting the prices of its competitors, Safeway had a gross sale of the foregoing items in the sum of $2,931.09, which is more than four times its normal Wednesday volume on these items and constitutes approximately one-half of Safeway's normal week's business in these products. In the case of some of these items, such as Joy detergent, Milnot and Ballard's or Pillsbury Biscuits, Safeway sold more on Wednesday, July 21, 1954, than it normally sells in a week's time.

In order to determine the effect upon its business of the failure by Safeway to meet the prices of its competitors, Safeway has caused a number of surveys to be made in areas where the competitive conditions are similar to those which exist in Oklahoma City. These surveys were conducted for the purpose of ascertaining the effect of the use of trading stamps by its competitors, and more particularly the practice of giving double trading stamps on Wednesday of each week. Such surveys were made prior to the time Safeway adopted the policy of reducing its prices by the value of trading stamps to meet the competitive prices of those merchants using trading stamps. During the period from April 15 through April 28, 1953, affiant made a survey of three stores of comparable size and quality in an area where substantially the same competitive conditions exist as are now present in Oklahoma City. One of these stores was a Safeway store and the other two were privately [fol. 1036] owned and distributed trading stamps on each day of the week and double stamps on Wednesday of each week. This survey was conducted by a crew of men under affiant's supervision by counting the number of customers

entering each of the three stores during the same hours of the day, with the following results:

Customers Entering Stores Between 9:30 a.m. and 11:00 a.m.	Safeway	Competitors
4-15-53 (Wednesday)	51	218
4-23-53 (Thursday)	82	69
4-28-53 (Tuesday)	76	83

Customers Entering Stores Between 4:00 p.m. and 6:00 p.m.	Safeway	Competitors
4-15-53 (Wednesday)	208	535
4-23-53 (Thursday)	307	413
4-28-53 (Tuesday)	226	357

A further illustration of the effect of giving double stamps on Wednesday is shown by a survey made on September 1, 1953, in an area having substantially the same competitive conditions as exist in the Oklahoma City area today. The area surveyed includes one Safeway Store and two stores marked "A" and "B" in the table below, where double stamps were distributed with each purchase on Wednesday. A representative number of housewives were interviewed to determine where they had traded in the preceding week and on what days, the survey producing the following results:
[fol. 1037]

	% of Total Housewives Who Shopped At This Store during preceding week		
Day on Which Shopped	Safeway	"A"	"B"
Monday	6%	7%	3%
Tuesday	6	5	3
Wednesday	7	25	19
Thursday	4	4	2
Friday	22	14	7
Saturday	13	11	9
Sunday	1	2	*

Further evidence of the diversion which takes place on Wednesdays when double stamps are given is illustrated by the following survey attached hereto as Exhibit "A". This comparison between Safeway's sales on Wednesday and those of some of its competitors was developed by a

customer count at the stores listed thereon under my supervision.

J. A. MITCHELL
J. A. Mitchell

Subscribed and sworn to before me this 20 day of December, 1954.

ALLIE PETERS
Notary Public.

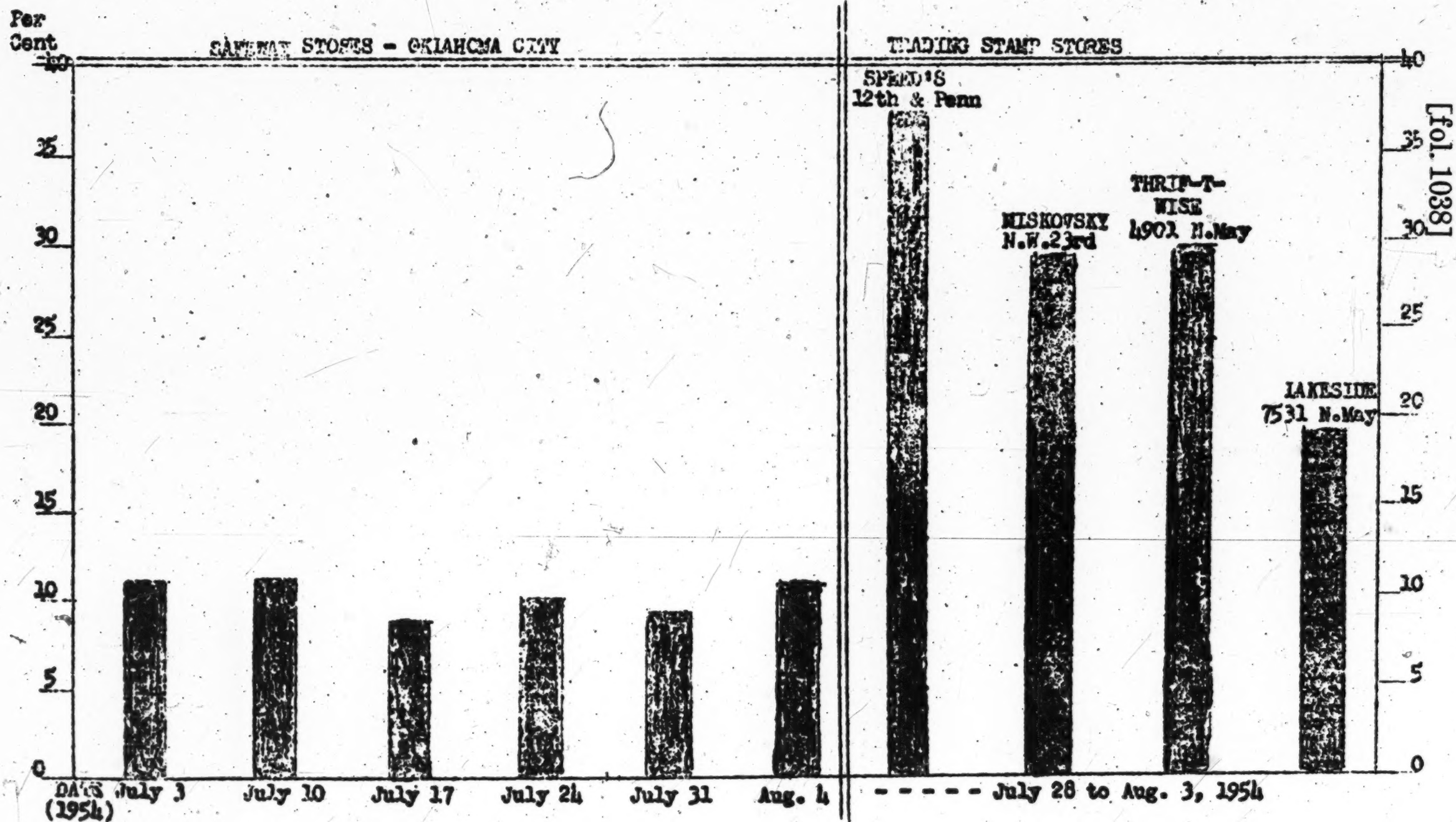
(Seal)

My commission expires:

7-14-57

PERCENTAGE OF WEDNESDAY'S (Double Stamp Day) SALES TO TOTAL WEEKLY SALES

Exhibit "A"



[fol. 1038]

PLAINTIFF'S EXHIBIT G

[fol. 1039] ENDORSED ON BACK:

No. 6471—Civil

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Oklahoma Retail Grocers Assoc., Inc., a corporation,

Plaintiff,

—VS—

Safeway Stores, Inc., a foreign corporation,

Defendant.

AFFIDAVIT IN OPPOSITION TO MOTION TO REMAND

FILED DEC. 21, 1954,

THEODORE M. FILSON, Clerk

EMBRY, CROWE, TOLBERT, BOXLEY AND JOHNSON
Attorneys and Counselors at Law,
Oklahoma City, Okla.

[fol. 1040]

PLAINTIFF'S EXHIBIT "K"

AL CHILDERS THRIF-T-WISE 4901 N May	strictly cash
Corsin's Thrif T Wise No. 1 1727 N W 16th	some credit
Corsin's Thrif T Wise No. 2 7303 N Wester	strictly cash
Scott's Thrif T Wise No. 1 2517 So Central	some credit
Scott's Thrif T Wise No. 2 3940 N W 10th	some credit
Lakeside Thrif T Wise 7531 No. May	strictly cash
Miskovsky's Thrif T Wise 3031 N W 23rd St.	strictly cash
Potter's Thrif T Wise 1604 N E 23rd Street	a little credit
Greenhaw's Thrif T Wise 6941 S E 29th Street	some credit

PLAINTIFF'S EXHIBIT "N"

[fol. 1041]
[fol. 1042]

(See Opposite)☞

(P. 491 G)

SAFEWAY PRIVATE LABELS

Sept 16, 17-1954

		MOR 12 oz.	PREM 12 oz.	SPAM 12 oz.	TREAT 12 oz.	AIRWAY 1 lb.	NOB HILL 1 lb.	EDWARDS 1 lb.	EDWARDS INST. 2 oz.	KITCHEN KRAFT 5 lb.	KITCHEN KRAFT 10 lb.	DUCHESS 1 pt.	DUCHESS 1 qt.	LUNCH BOX 1 pt.	LUNCH BOX 1 qt.	SUNBEAM 1 lb.	DALEWOOD 1 lb.	ROYAL SATIN 3 lb.	KREE 3 lb.	PARADE LARGE	PARADE GIANT	MRS. WILBERT'S 24 oz.	CREMO tall
		CANNED MEATS				COFFEE				FLOUR		SALAD DRESSING SAN. SPREAD				MARGARINE		SHORTENING		WASHING POWDER		EVD MILK	
ADA	16					99	1.01				83		57		49	27	21	91	77				
BARTLESVILLE	16					99	1.01	1.03					59		49	25		89					
CLINTON																							
CUSHING																							
EL RENO	16					99	1.01				83		54		49	27	19	91	75				7/25
GUTHRIE																							
LAWTON	16					99	1.01				83		57		49	31	21		76			21	7/25
NOWATA	16					99	1.01	1.03			80		54		49	25		89					
OKLAHOMA CITY	17					99	1.01				80				49	27	21	89	77				7/25
PERRY	16					99	1.01				83		57		49	27	21	91	77	31 1/2 pkg			7/25
PONCA CITY	16					99	1.01				83		57		49	27	19	79	77				7/23
PRYOR	16				39	94											19						
SKIAWNEE	17					99	1.01				83		57		49	27	21	91	77				7/25
TULSA																							
WEWOKA	16					99	1.01	1.03			80		55		49	25		89					
WOODWARD																							
Muskogee	17					99	1.01				80				49								

PLAINTIFF'S EXHIBIT "N" (P.491-(2)

Sept. 16-17 - 1955

DATE	BALLARDS 3 for	PILLSBURY 3 for	PUFFIN 3 for	VELVETEA 2 lbs.	FOLGERS 1 lb.	MARYLAND CLUB 1 lb.	MAXWELL HOUSE 1 lb.	BORDENS 2 oz.	CAINS 2 oz.	MAXWELL HOUSE 2 Oz.	GOLD MEDAL 5 lb.	GOLD MEDAL 10 lb.	RED STAR 5 lb.	RED STAR 10 lb.	PILLSBURY 5 lb.	PILLSBURY 10 lb.	PILLSBURY 16 oz.	PILLSBURY 2 lb.	AUNT JENIMA 2½ lb.	PILLSBURY Except Angel Fd	BETTY CROCKER Except Angel Food	JELLO	HI C ORANGEADE 46 oz.	HAWAIIAN PUNCH 46 oz.	LIBBYS TOMATO 46 oz.	KRAFT MAYONNAISE 8 oz.	KRAFT MAYONNAISE quart	MIRACLE WHIP 8 oz.	MIRACLE WHIP quart	KRAFT S. SPREAD 8 oz.	KRAFT S. SPREAD 16 oz.
	BISCUITS CANNED			CHEESE	COFFEE			COFFEE INSTANT			FLOUR									PANCAKE FLOUR			CAKE MIXES		JELLO	FRUIT JUICES			MAYONNAISE SANDWICH SPREAD				
ADA 16									53																						
BARTLESVILLE 16																															
CLINTON																															
CUSHING																															
EL RENO 16				(77)					53																						
GUTHRIE																															
LAWTON 16				87					53																						
NOWATA 16																															
OKLAHOMA CITY 17				(79)							(49)											3/25							54		38
PERRY 16				87					53																						
PONCA CITY 16				(79)					53													(4/1.00)							55		
PRYOR 16																															
SHAWNEE 17				87					53																						
TULSA																															
WEWOKA 16	(9)	(9)																													
WOODWARD																															
Muskogee 17																															

PL. EX. "N" (P.491-(3)

MARGARINE			MILK CANNED			SAN. NAPKINS		SHORTENING				SOAPS						DETERGENTS								SOUP CANNED		SUGAR GRANULATED				SUGAR POWDERED	
BLUE BONNET 1 lb.	MEADOWLAKE 1 lb.	PARKAY 1 lb.	CARNATION tall	MILNOT tall	PET tall	KLEENEX 200	KLEENEX 300	BAKERITE 3 lb.	CRISCO 3 lb.	SPRY 3 lb.	MRS. TUCKERS 3 lb.	CHEER large	CHEER giant	DREFT large	DREFT Giant	FAB large	FAB giant	OXYDOL large	OXYDOL giant	RINSO large	RINSO giant	TIDE large	TIDE giant	VEL large	VEL giant	BROOKS TOMATO	CAMPBELLS TOMATO	C & H 5 lb.	C & H 10 lb.	IMPERIAL 5 lb.	IMPERIAL 10 lb.	C & H 1 lb.	IMPERIAL 1 lb.
			3/28			2/25		84	92													71		71									
			2/25			2/25																											

PLAINTIFF'S EXHIBIT "N-1"

[fol. 1043]
[fol. 1044]

(See Opposite)

(P. 493 - 1)

Sept 23, 24-54

SAFEWAY PRIVATE LABELS

	MOR 12 oz.	PREM 12 oz.	SPAN 12 oz.	TREAT 12 oz.	AIRWAY 1 lb.	WOH HILL 1 lb.	EDWARDS 1 lb.	EDWARDS INST. 2 oz.	KITCHEN KRAFT 5 lb.	KITCHEN KRAFT 10 lb.	DUCHESS 1 pt.	DUCHESS 1 qt.	LUNCH BOX 1 pt.	LUNCH BOX 1 qt.	SUNNYBANK 1 lb.	DALEWOOD 1 lb.	ROYAL SATIN 3 lb.	KREE 3 lb.	PARADE LARGE	PARADE GIANT	MRS. WRIGHT'S 24 oz.	CHEROB tall
	CANNED MEATS				COFFEE				FLOUR		SALAD DRESSING SAN. SPREAD				MARGARine		SHORTENING		WASHING POWDER		BRD MILK	
ADA 23		—			99	1.01	1.12			83				49	31		91		31 1 free			
BARTLESVILLE 23					99	1.01	1.07							49		21			2/31			
CLINTON																						
CUSHING																						
EL RENO 23					99	1.01	1.07			83					31	19			31 1 free			
GUTHRIE 23					99	1.01	1.12			83					30		91		31 1 free			
LAWTON 23					99	1.01	112			83				49	27			76	31 1 free			
MIAMI																						
OKLAHOMA CITY 24					99	1.01	1.12		49	80		53		49	30		86 1 free		31 1 free			
PERRY 23					99	1.01	1.12			83				49	30		91		31 1 free			
PONCA CITY 23						82	87			83				49	27				31 1 free			
PRYOR																						
SHAWNEE 24					95	97	1.18			83					31	21						
TULSA																						
WEWOKA 23					99	1.01	111							49		19	89		2/31			
WOODWARD 23										83				49		21	91	77	31 1 free			
Muskogee 24					99	1.01	1.11							49		21	89		2/31			

(p.493 - (2)

DATE Sept 23-24, 1954	BALLARDS 3 for	PILLSBURY 3 for	PUFFIN 3 for	VELVEETA 2 lbs.	FOLGERS 1 lb.	MARYLAND CLUB 1 lb.	MAXWELL HOUSE 1 lb.	BORDENS 2 oz.	CAINS 2 oz.	MAXWELL HOUSE 2 oz.	GOLD MEDAL 5 lb.	GOLD MEDAL 10 lb.	RED STAR 5 lb.	RED STAR 10 lb.	PILLSBURY 5 lb.	PILLSBURY 10 lb.	PILLSBURY 16 oz.	PILLSBURY 2 lb.	AUNT JEMIMA 2½ lb.	PILLSBURY except Angel Fd	BETTY CROCKER except Angel Food	JELLO	HI C ORANGEADE 46 oz.	HAWAIIAN PUNCH 46 oz.	LIBBYS TOMATO 46 oz.	KRAFT MAYONNAISE 8 oz.	KRAFT MAYONNAISE quart	MIRACLE WHIP 8 oz.	MIRACLE WHIP quart	KRAFT S. SPREAD 8 oz.	KRAFT S. SPREAD 16 oz.
	BISCUITS CANNED			CHEESE	COFFEE			COFFEE INSTANT			FLOUR						PANCAKE FLOUR			CAKE MIXES		JELLO	FRUIT JUICES			MAYONNAISE SANDWICH SPREAD					
ADA 23																															
BARTLESVILLE 23																															
CLINTON																															
CUSHING																															
EL RENO 23																							4/1.00								
GUTHRIE 23				83																									53		
LAWTON 23																				31			27								
NOWATA																															
OKLAHOMA CITY 24				79																									54		
PERRY 23			25																				25								
PONCA CITY 23																					3/1.00										
PRYOR																															
SHAWNEE 24	2/19	2/19			1.10																										
TULSA																															
WEWOKA 23																															
WOODWARD 23																				31											
Muskogee 24																															

MARGARINE			MILK CANNED			SAN. NAPKINS		SHORTENING				SOAPS								DETERGENTS										SOUP CANNED		SUGAR GRANULATED				SUGAR POWDERED	
BLUE BONNET 1 lb.	MEADOWLAKE 1 lb.	PARKAY 1 lb.	CARNATION tall	MILNOT tall	PET tall	KLEENEX 200	KLEENEX 300	BAKERITE 3 lb.	CRISCO 3 lb.	SPRY 3 lb.	MRS. TUCKER'S 3 lb.	CHEER large	CHEER giant	DREFT large	DREFT Giant	FAB large	FAB giant	OXYDOL large	OXYDOL giant	RINSO large	RINSO giant	TIDE large	TIDE giant	VEL large	VEL giant	BROOKS TOMATO	CAMPBELLS TOMATO	C & H 5 lb.	C & H 10 lb.	IMPERIAL 5 lb.	IMPERIAL 10 lb.	C & H 1 lb.	IMPERIAL 1 lb.
		31						90																											
								90																											
		31						90																											
		31																																	
		30	3/28		3/25			92							71		71					71							1.00		1.00				
		31						90																											
		31						79																						89			3/25		
		31	3/29					90																											

PLAINTIFF'S EXHIBIT "N-2"

[fol. 1045]
[fol. 1046]

(See Opposite)

P. 495 (1)

Sept 30th Oct 1 1954

SAFEWAY PRIVATE LABELS

		CANNED MEATS				COFFEE					FLOUR		SALAD DRESSING SAN. SPREAD		MARGARINE		SHORTENING		WASHING POWDER		EVAP. MILK	
		MOR. 12 oz.	PREM 12 oz.	SPAM 12 oz.	TREAT 12 oz.	AIRWAY 1 lb.	JOB HILL 1 lb.	EDWARDS 1 lb.	EDWARDS INST. 2 oz.	KITCHEN KRAFT 5 lb.	KITCHEN KRAFT 10 lb.	DUCHESS 1 pt.	DUCHESS 1 qt.	LUNCH BOX 1 pt.	LUNCH BOX 1 qt.	SUNNYBANK 1 lb.	DALEWOOD 1 lb.	ROYAL SATIN 1 lb.	KREE 3 lb.	PARADE LARGE	PARADE GIANT	NES. NURSER'S 24 oz.	CARNATION tall
ADA	30	43				99	1.01				98		57			30			77				
BARTLESVILLE	30					99	1.01	1.07			95							89					
CLINTON	30	43				95	97	1.11	61		98		57			31							
CUSHING																							
EL RENO	30					99	1.01	1.07	61				54						75				
GUTHRIE	30	43				99	1.01	1.12	61		98		52			31			77				
LAWTON	30	43									98		57			31	21		96				
NOWATA	30					99	1.01	1.11			95							89					
OKLAHOMA CITY	1	41				99	101	1.12	58				53					84	77				
PERRY	30	43				99	1.01	1.07	61		98					30			97	25	49		
PONCA CITY	30	43				80	82	89	61		87		49			27			69				
PRYOR	30					97												85					
SHAWNEE	1	43				97	1.01	1.12	61		98		57			31			77				
TULSA																							
WEWOKA	30					99	1.01	1.11			95							89					
WOODWARD	30	43				99	1.01	1.10	61		98					31	19		77				
Muskogee	1					99	1.01	1.11			95							89					

p.495 (2)

9/30 - 10/1 54

DATE	BALLARDS 3 for	PILLSBURY 3 for	PUFFIN 3 for	VELVETEEN 2 lbs.	FOLGERS 1 lb.	MAYFLAIR CLUB 1 lb.	MAXWELL HOUSE 1 lb.	BORDENS 2 oz.	CAINS 2 oz.	MAXWELL HOUSE 2 oz.	GOLD MEDAL 5 lb.	GOLD MEDAL 10 lb.	RED STAR 5 lb.	RED STAR 10 lb.	PILLSBURY 5 lb.	PILLSBURY 10 lb.	PILLSBURY 16 oz.	PILLSBURY 2 lb.	AUNT JEMIMA 2½ lb.	PILLSBURY except Angel Fd	BETTY CROCKER except Angel Food	JELLO	HI C ORANGEADE 46 oz.	HAWAIIAN PUNCH 46 oz.	LIBBYS TOMATO 46 oz.	KRAFT MAYONNAISE 8 oz.	KRAFT MAYONNAISE quart	MIRACLE WHIP 8 oz.	MIRACLE WHIP quart	KRAFT S. SPREAD 8 oz.	KRAFT S. SPREAD 16 oz.
	BISCUITS CANNED			CHEESE	COFFEE			COFFEE INSTANT			FLOUR						PANCAKE FLOUR			CAKE MIXES		JELLO	FRUIT JUICES			MAYONNAISE SANDWICH SPREAD					
ADA 30																					(27)										
BARTLESVILLE 30																															
CLINTON 30																					(27)										
CUSHING																															
EL RENO 30																					(27)										
GUTHRIE 30																					(27)										
LAWTON 30																					(27)										
MIAMI 30																															
OKLAHOMA CITY 1																					(27)						53			35	
PERRY 30																					(27)										
PONCA CITY 30																					(27)										
PRYOR 30				(2/75)																							33				
SHAWNEE 191																					(27)										
TULSA																															
WAUKOMIS 30																															
WOODWARD 30																					(27)										
muskogee 1																															

MARGARINE			MILK CANNED			SAN. NAPKINS		SHORTENING				SOAPS		DETERGENTS												SOUP CANNED		SUGAR GRANULATED				SUGAR POWDERED	
BLUE BONNET 1 lb.	MEADOWLAKE 1 lb.	PARKAY 1 lb.	CARNATION tall	MILNOT tall	PET tall	KLEENEX 200	KLEENEX 300	BAKERITE 3 lb.	CRISCO 3 lb.	SPRY 3 lb.	MRS. TUCKERS 3 lb.	CHEER large	CHEER giant	DREFT large	DREFT Giant	FAB large	FAB giant	OXYDOL large	OXYDOL giant	RINSO large	RINSO giant	TIDE large	TIDE giant	VEL large	VEL giant	BROOKS TOMATO	CAMPBELLS TOMATO	C & H 5 lb.	C & H 10 lb.	IMPERIAL 5 lb.	IMPERIAL 10 lb.	C & H 1 lb.	IMPERIAL 1 lb.

PLAINTIFF'S EXHIBIT "N-3"

[fol. 1047]
[fol. 1048]

(See Opposite)☞

p. 497 - (1)

Oct 21-22-54

SAFEWAY PRIVATE LABELS

		CANNED MEATS				COFFEE				FLOUR		SALAD DRESSING SAN. SPREAD				MARGARINE		SHORTENING		WASHING POWDER		BRD MILK	
		MOR 12 oz.	PREM 12 oz.	SPAM 12 oz.	TREAT 12 oz.	AIRWAY 1 lb.	MOB HILL 1 lb.	EDWARDS 1 lb.	EDWARDS INST. 2 oz.	KITCHEN KRAFT 5 lb.	KITCHEN KRAFT 10 lb.	DUCHESS 1 pt.	DUCHESS 1 qt.	LUNCH BOX 1 pt.	LUNCH BOX 1 qt.	SUNNYBANK 1 lb.	DALEWOOD 1 lb.	ROYAL SATIN 3 lb.	KEEN 3 lb.	PARADE LARGE	PARADE GIANT	MRS. WRIGHT'S 24 oz.	CHERUB tall
ADA	21					95	97	1.12	61							29	19	69		31	61	21	
BARTLESVILLE	21					94	96									27		84					
CLINTON	21					95	97	1.07	61							29	19		77	31	61		
CUSHING																							
EL RENO	21					93	95	99	51							29				25	49		
GUTHRIE	21					95	97	1.07	61							29				31	61		
LAWTON																							
NOWATA																							
OKLAHOMA CITY	22					95	97	1.07	58	48			48			29	19	78					
PERRY	21					95	97	1.12	61							29				31	61		
PONCA CITY	21					80	82	89	51							29		83		25	49		
PRYOR	21					84	86	91			89												
SHAWNEE																							
TULSA																							
WEWOKA	21					94	96									27							
WOODWARD	21					95	97	1.12	61							29	7/37			31	61		
muskogee	22					94	96									27							

p. 497 (2)

Oct 21-22-54

DATE	BALLARDS 3 for	PILLSBURY 3 for	PUFFIN 3 for	VELVETTA 2 lbs.	FOLGERS 1 lb.	MARYLAND CLUB 1 lb.	MAXWELL HOUSE 1 lb.	BORDENS 2 oz.	CAINS 2 oz.	MAXWELL HOUSE 2 oz.	GOLD MEDAL 5 lb.	GOLD MEDAL 10 lb.	RED STAR 5 lb.	RED STAR 10 lb.	PILLSBURY 5 lb.	PILLSBURY 10 lb.	PILLSBURY 16 oz.	PILLSBURY 2 lb.	AUNT JEMIMA 2½ lb.	PILLSBURY except Angel Fd	BETTY CROCKER except Angel Food	JELLO	HI C ORANGEADE 46 oz.	HAWAIIAN PUNCH 46 oz.	LIBBYS TOMATO 46 oz.	KRAFT MAYONNAISE 8 oz.	KRAFT MAYONNAISE quart	MIRACLE WHIP 8 oz.	MIRACLE WHIP quart	KRAFT S. SPREAD 8 oz.	KRAFT S. SPREAD 16 oz.
	BISCUITS CANNED			CHEESE	COFFEE			COFFEE INSTANT			FLOUR									CAKE MIXES		JELLO	FRUIT JUICES			MAYONNAISE SANDWICH SPREAD					
ADA 21																				29											
BARTLESVILLE 21																															
CLINTON 21																				34											
CUSHING																															
EL RENO 21																				33			25								
GUTHRIE 21																				35	31		25								
LAWTON																															
MIAMI																															
OKLAHOMA CITY 22											48									31		.08							48		35
PERRY 21																				35											
PONCA CITY 21																				35											
PRYOR 21	3/25	3/25																													
SHAWNEE																															
TULSA																															
WEWOKA 21																															
WOODWARD 21																				31											
Muskogee 22																															

MARGARINE			MILK CANNED			SAN. NAPKINS		SHORTENING			SOAPS			DETERGENTS									SOUP CANNED		SUGAR GRANULATED				SUGAR POWDERED	
BLUE BONNET 1 lb.	MEADOWLAKE 1 lb.	PARKAY 1 lb.	CARNATION tall	MILNOT tall	PET tall	KLEENEX 200	KLEENEX 300	BAKERITE 3 lb.	CRISCO 3 lb.	SPRY 3 lb.	MRS. TUCKERS 3 lb.	CHEER large	CHEER giant	DREFT large	DREFT Giant	FAB large	FAB giant	OXYDOL large	OXYDOL giant	RINSO large	RINSO giant	TIDE large	TIDE giant	VEL large	VEL giant	BROOKS TOMATO	CAMPBELLS TOMATO	C & H 5 lb.	C & H 10 lb.	IMPERIAL 5 lb.	IMPERIAL 10 lb.	C & H 1 lb.	IMPERIAL 1 lb.
																												1.00					
			3/26	2/23				84				31	69	69				67										92		92			
																												3/29	89				
			2/25	2/25							77																						

PLAINTIFF'S EXHIBIT "N-4"

[fol. 1049]
[fol. 1050]

(See Opposite)☞

p. 499-(1)

Oct 7-8-1954

SAFEWAY PRIVATE LABELS

		NOR 12 oz.	PERM 12 oz.	SPAN 12 oz.	WHAT 12 oz.	AIRWAY 1 lb.	FOR HILL 1 lb.	EDWARDS 1 lb.	EDWARDS INST. 2 oz.	KITCHEN KRAFT 5 lb.	KITCHEN KRAFT 10 lb.	DUCHESS 1 pt.	DUCHESS 1 qt.	LUNCH BOX 1 pt.	LUNCH BOX 1 qt.	SUNNYMAK 1 lb.	DALEWOOD 1 lb.	ROYAL SATIN 3 lb.	KNEE 3 lb.	PARADE LARGE	PARADE GIANT	MRS. WRIGHT'S 24 oz.	CHEMUD tall
		CANNED MEATS				COFFEE				FLOUR		SALAD DRESSING SAN. SPREAD				MARGA-rine		SHORT-ENING		WASHING POWDER		BRD MILK	
ADA	7	43	45		45	99	1.01	1.12	61	53	98			35		30			77				
BARTLESVILLE	7					99	1.01	1.07										89					
CLINTON	7	43	45		45	99	97	1.11	61	53	98			35		30			77				
CUSHING	7					99	1.01	1.11										85					
EL RENO	7	43	45		46	99	1.01	1.07	61	53	92					30			75				
GUTHRIE	7	43	45		45	99	1.01	1.12	61	53	98					30			77				
LAWTON																							
NOWATA	4					99	1.01	1.11				53						89					
OKLAHOMA CITY	8	41	43		42	99	1.01	1.12	58	48				35		30		84	77				
PERRY	7	43	45		45	99	1.01	1.12	61	53	98					30			77				
PONCA CITY	7	43	43		43	80	82	89	61	49	79					30			73				
PRYOR	7					97		1.07									19						
SHAWNEE	8	43	45		45	95	97	1.12	61	53	98					30	39		77				
TULSA																							
WEWOKA	7					99	1.01	1.11										89					
WOODWARD	7					99	101		61								19						
Muskogee	8					99	1.01	1.11										89					

p.499 (2)

Oct 7-8-54

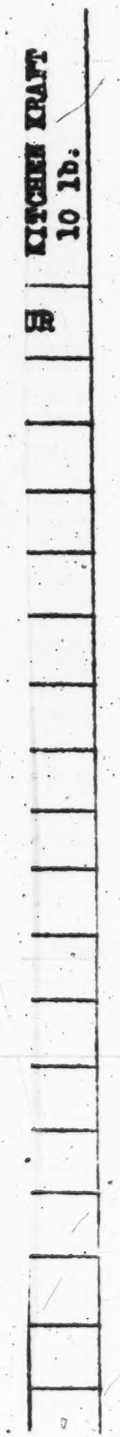
DATE		BALLARDS 3 for	PILLSBURY 3 for	PUFFIN 3 for	VELVEETA 2 lbs.	FOLGERS 1 lb.	MARYLAND CLUB 1 lb.	MAXWELL HOUSE 1 lb.	BORDENS 2 oz.	CAINS 2 oz.	MAXWELL HOUSE 2 oz.	GOLD MEDAL 5 lb.	GOLD MEDAL 10 lb.	RED STAR 5 lb.	RED STAR 10 lb.	PILLSBURY 5 lb.	PILLSBURY 10 lb.	PILLSBURY 16 oz.	PILLSBURY 2 lb.	AUNT JEMIMA 24 lb.	PILLSBURY except Angel Fd	BETTY CROCKER except Angel Food	JELLO	HI C ORANGEADE 46 oz.	HAWAIIAN PUNCH 46 oz.	LIBBYS TOMATO 46 oz.	KRAFT MAYONNAISE 8 oz.	KRAFT MAYONNAISE quart	MIRACLE WHIP 8 oz.	MIRACLE WHIP quart	KRAFT S. SPREAD 8 oz.	KRAFT S. SPREAD 16 oz.
		BISCUITS CANNED			CHEESE	COFFEE			COFFEE INSTANT			FLOUR						PANCAKE FLOUR			CAKE MIXES		JELLO	FRUIT JUICES			MAYONNAISE SANDWICH SPREAD					
ADA	7																				35											
BARTLESVILLE	7																									31						
CLINTON	7			7/19																	35											
CUSHING	7																									29						
EL RENO	7												92								33											
GUTHRIE	7																				35			25								
LAWTON																																
NOWATA	7																									31						
OKLAHOMA CITY	8						1.13					48									31									53		35
PERRY	7																				35											
PONCA CITY	7																				35					25						
PRYOR	7																												16 oz 33			
SHAWNEE	8																				35											
TULSA																																
WEWOKA	7																									31			16 oz 35			
WOODWARD	7																															
Muskogee	8																									31						

MARGARINE			MILK CANNED			SAN. NAPKINS		SHORTENING				SOAPS						DETERGENTS										SOUP CANNED		SUGAR GRANULATED						SUGAR P'DERED	
BLUE BONNET 1 lb.	MEADOWLAKE 1 lb.	PARKAY 1 lb.	CARNATION tall	MILNOT tall	PET tall	KLENEX 200	KLENEX 300	BAKERITE 3 lb.	CRISCO 3 lb.	SPRY 3 lb.	MRS. TUCKERS 3 lb.	CHEER large	CHEER giant	DREFT large	DREFT Giant	FAB large	FAB giant	OXYDOL large	OXYDOL giant	RINSO large	RINSO giant	TIDE large	TIDE giant	VEL large	VEL giant	BROOKS TOMATO	CAMPBELLS TOMATO	C & H 5 lb.	C & H 10 lb.	IMPERIAL 5 lb.	IMPERIAL 10 lb.	C & H 1 lb.	IMPERIAL 1 lb.				
																								31													
																								31													
																								31													
																								31													
																								31													
																								31													
3/27			12					90				69				69		69						69 31						95		95					
								89																31													
3/25			3/23					91				79												31													
								97																													

PLAINTIFF'S EXHIBIT "N-5"

[fol. 1051]
[fol. 1052]

(See Opposite)☞



Oct. 14-15-54

		CANNED MEATS				COFFEE				FLOUR		SALAD DRESSING SAN. SPREAD				MARGA-rine		SHORT-ENING		WASHING POWDER		BRD MILK	
		MOR 12 oz.	PREM 12 oz.	SPAM 12 oz.	TREAT 12 oz.	AIRWAY 1 lb.	NOB HILL 1 lb.	EDWARDS 1 lb.	EDWARDS INST. 2 oz.	KITCHEN KRAFT 5 lb.	KITCHEN KRAFT 10 lb.	DUCHESS 1 pt.	DUCHESS 1 qt.	LUNCH BOX 1 pt.	LUNCH BOX 1 qt.	SUNNYBANK 1 lb.	DALEWOOD 1 lb.	ROYAL SATIN 3 lb.	KEEN 3 lb.	PARADE LARGE	PARADE GIANT	MRS. WRIGHT'S 24 oz.	CHERUB tall
ADA	14					95	97	1.12	61					35		30	21	91	77	25	49		
BARTLESVILLE	14				45	94	96	1.07						35				85 1lb free					
CLINTON	14					95	97	1.12	61					35		30	19	91	77	25	49		
CUSHING																							
EL RENO	14					95	97	1.07	61					35		30	19	85	75	25	49		
GUTHRIE	14					95	97	1.12						35		30	20	85	77	25	49		
LAWTON																							
NOWATA	14				45	94	96	1.11						35		27		1lb free 84					
OKLAHOMA CITY	15					95	97	1.12	58	48			49	35		29		80	77	25	49		
PERRY	14					95	97	1.12	61					35		30	21	85	69	25	49		
PONCA CITY	14				43				61					35		30	21	83	77	25	49		
PRYOR	14				39	94											19	85					
SHAWNEE	15					95	97	1.12	61					35		30	21/35	85	75	25	49		
TULSA	15				43	94	96	1.11						35			19	83		31			
WEWOKA	14				42	94	96	1.11						35				1lb free 85					
WOODWARD																							
Muskogee	15				45	94	96	1.11															

SAFEWAY PRIVATE LABELS

p. 501 (2)

Oct 14-15-54

DATE	BALLARDS 3 for	PILLSBURY 3 for	PUFFIN 3 for	VELVETA 2 lbs.	FOLGERS 1 lb.	MARYLAND CLUB 1 lb.	MAXWELL HOUSE 1 lb.	BORDENS 2 oz.	CAINS 2 oz.	MAXWELL HOUSE 2 oz.	GOLD MEDAL 5 lb.	GOLD MEDAL 10 lb.	RED STAR 5 lb.	RED STAR 10 lb.	PILLSBURY 5 lb.	PILLSBURY 10 lb.	PILLSBURY 16 oz.	PILLSBURY 2 lb.	AUNT JEMINA 2½ lb.	PILLSBURY Except Angel Fd	BETTY CROCKER Except Angel Food	JELLO	HI-C ORANGEADE 46 oz.	HAWAIIAN PUNCH 46 oz.	LIBBYS TOMATO 46 oz.	KRAFT MAYONNAISE 8 oz.	KRAFT MAYONNAISE quart	MIRACLE WHIP 8 oz.	MIRACLE WHIP quart	KRAFT S. SPREAD 8 oz.	KRAFT S. SPREAD 16 oz.
	BISCUITS CANNED			CHEESE	COFFEE				COFFEE INSTANT		FLOUR							PANCAKE FLOUR			CAKE MIXES		JELLO	FRUIT JUICES			MAYONNAISE SANDWICH SPREAD					
ADA 14																															
BARTLESVILLE 14																				35											
CLINTON 14																					3/1.00										
CUSHING																															
EL RENO 14																															
GUTHRIE 14																															
LAWTON																				35											
MIAMI 14																										28			49		
OKLAHOMA CITY 15											(48)																				
PERRY 14																															
PONCA CITY 14																															
PRYOR 14				75																											
SHAWNEE 15																				31											
TULSA 15																				31											
WEWOKA 14																															
WOODWARD																				35											
Muskogee 15																															

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MARGARINE			MILK CANNED			SAN. NAPKINS		SHORTENING			SOAPS			DETERGENTS											SOUP CANNED		SUGAR GRANULATED			SUGAR POWDERED	
	MEADOWLAKE 1 lb.	PARKAY 1 lb.	CARNATION tall	MILNOT tall	PET tall	KLEENEX 200	KLEENEX 300	BAKERITE 3 lb.	CRISCO 3 lb.	SPRY 3 lb.	MRS. TUCKERS 3 lb.	CHEER large	CHEER giant	DREFT large	DREFT Giant	FAB large	FAB giant	OXYDOL large	OXYDOL giant	RINSO large	RINSO giant	TIDE large	TIDE giant	VEL large	VEL giant	BROOKS TOMATO	CAMPBELLS TOMATO	C & H 5 lb.	C & H 10 lb.	IMPERIAL 5 lb.	IMPERIAL 10 lb.	C & H 1 lb.	IMPERIAL 1 lb.
								84																				1.00		1.00		
								84						31														1.00		1.00		
								84	91					31												/						
								80						31														1.00		1.00		
29	3/27	12						84	86		68					68	68			68								95		95		
								84						31														1.00		1.00		
								84						31														.89		.89		
	2/25	2/25							91		79															10						
								84	91					31														.95		.95		
															31																	

DEFENDANT'S EXHIBIT No. 1

[fol. 1053]
[fol. 1054]
[fol. 1055]

(See Opposite)

Defendant's Exhibit No. 1

(p. 503 - (1)

True Value of S & H Trading Stamp Premiums

Item	Brand	Description	No. Stamps Needed (Books)	Expenditures Needed to Get This Item With Stamps	Fair Trade Price or Manufacturer's Suggested Retail Price	Mail Order Price Ward's or Sear's	Dept. Store Price (Adv. Specl)	Price Charged by Discount Houses
Bath Scales	Borg	Flight - 14 x 12 x 2 1/2	4 1/4	$ 510	$ 15.75	$ 15.75	$ 15.75	$ 11.40
	Borg	Enamel & stainless steel	2 1/4	270	8.45	8.45	8.45	5.65
Blender	Waring	Standard	11 1/2	1,380	38.95	38.95	38.95	29.10
Cake Cover	Kromex	12 1/2" diameter 6 1/2" high	1 1/4	150	4.19	4.19	2.59*	2.90
Canister set	Kromex	4 pc. black plastic cover	2 3/4	330	7.98	7.98	4.95*	5.25
Cameras & equipment	Kodak	Brownie "Hawkeye" camera flash model	2 1/4	270	6.95	6.95	6.95	5.70
	Kodak	Brownie "Holiday" camera picture 1 5/8" x 2 1/2"	1 1/4	150	2.95	2.95	2.95	2.48
	Kodalite	Flashholder	1 1/2	180	4.00	4.00	4.00	3.42
Camping equipment	Coleman	Campstove - 2 burners 22 1/16 x 13 3/8 x 5 1/4 - 3 pt. capacity	5 1/2	660	16.95	16.95	16.95	13.46
	Coleman	Double Mantle Lantern - 14 1/2" high - 2 pt. capacity	4 1/2	540	13.95	13.95	13.95	10.90
Carpet Sweeper	Bissel	Grand Rapids	3	360	12.25	10.25	12.25	9.00
	Bissel	Sweepmaster	3 3/4	450	15.25	12.95	15.25	11.21
Chopper, Food	Universal	3 cutters - 2 3/4 x 3 5/8 hopper	1 1/4	150	4.35	4.35	4.35	3.92
Clocks	G. E.	Brite Dial	3 1/4	390	9.98	9.98	9.98	7.35
	G. E.	"Starter" alarm clock, sweep second hand	1 1/4	150	3.98	3.98	3.98	3.18
	G. E.	"Starter" luminous, dial in blue	1 3/4	210	4.98	4.98	4.98	3.85
	G. E.	"Topper"	1 1/4	150	3.98	3.98	3.98	2.96
	Telechron	"Butler"	2 1/2	300	5.49	5.49	5.49	4.19
Coffee pots	Universal	Coffeematic - 10 cups	9 1/4	1,110	29.50	29.50	29.50	21.15
	Mirromatic	Automatic - 8 cup percolator	3 3/4	450	12.95	12.95	12.95	---
	Pyrex	Percolator - 6 cup	1	120	3.45	3.45	3.45	---

True Value of S & H Trading Stamp Premiums (Cont.)

(p 503 - (2)

Item	Brand	Description	No. Stamps Needed (Books)	Expenditures Needed to Get This Item With Stamps	Fair Trade Price Or Manufacturer's Suggested Retail Price	Mail Order Price Ward's or Sear's	Dept. Store Price (Adv. Spec.*)	Price Charged by Discount Houses**
Cookbooks	American Women	Cookbook	1	$ 120	$ 3.95	$ 2.73	$ 3.95	---
	Betty Crocker	Cookbook, hard back cover	1 3/4	210	3.50	3.39	3.50	---
Cookware	Wearever "Hallite Ware"	Covered fry pan - 10 3/4"	2 1/4	270	9.00	9.00	9.00	$ 6.62
		Covered sauce pan - 3 1/2 qt.	2	240	7.95	7.95	7.95	5.38
		Covered sauce pan - 2 1/2 qt.	1 3/4	210	6.95	6.95	6.95	5.15
		Covered sauce pan - 1 1/2 qt.	1 1/2	180	5.75	5.75	5.75	---
	Club Aluminum	Oval roaster - 15" long	3 1/4	390	12.50	10.50	12.50	---
	Hammercraft	Dutch oven - 4 1/2 qt.	2 1/2	300	8.50	7.95	5.63*	---
		Covered saucepan - 3 qt	2	240	6.75	6.25	4.13*	4.46
		Covered saucepan - 2 qt.	1 3/4	210	5.45	5.45	5.45	---
		Chicken fryer 12"	2 3/4	330	8.95	8.95	6.95*	---
		Open fry pan 10"	1 1/2	180	4.50	4.50	4.50	---
		Open fry pan 8"	1 1/4	150	3.95	3.95	3.95	---
		Broiler griddle 10"	1 1/4	150	5.95	4.25	5.95	---
Flatware	Rogers Bros.	"Daffodil" 34 pc. set	16	1,920	56.50	56.50	56.50	45.20
	Wm. Rogers & Son	"Exquisite" - 52 pc. set	16	1,920	54.75	54.75	54.75	43.80
Fryer	Dormeyer	Deep fryer	8 3/4	1,050	29.95	29.95	29.95	19.43
Irons	G. E.	Steam iron for dry or steam	5 1/2	660	17.95	17.95	17.95	12.90
Juicer	Rival	Juice-O-Mat, white enamel, chrome trim	1 3/4	210	6.59	6.59	6.59	4.65
Lighter	Ronson	"Triumph" - Chrome engraved lion design - swivel base	2	240	6.95	6.95	6.95	4.17
Luggage	Samsonite	Admiral blue plastic						
		train case 13 x 8 x 9	5 1/2	660	19.25	19.25	19.25	---
		vanity 15"	5 1/2	660	19.25	19.25	19.25	---
		overnite case 21"	6 1/2	780	21.45	21.45	21.45	---
		wardrobe case 21"	8	960	27.50	27.50	27.50	---

True Value of S & H Trading Stamp Premiums (Cont.)

(p. 503 - (3)

Item	Brand	Description	No. Stamps Needed (Books)	Expenditures Needed to Get This Item With Stamps	Fair Trade Price or Manufacturer's Suggested Retail Price	Mail Order Price Ward's or Sear's	Dept. Store Prices (Adv. Spec.*)	Price Charged by Discount Houses
Mixer	G. E.	Portable hand mixer wt. 3 lbs. 3 speeds	6	$ 720	$ 19.95	$ 19.95	$ 19.95	$ 14.30
Pen	Parker	"21" pen & pencil set	2 3/4	330	8.75	8.75	8.75	6.60
		"51" pen	3 3/4	450	12.50	12.50	12.50	10.00
Pressure cooker	Mirro-Matic	4 qt. pressure cooker without side grip	3 3/4	450	13.95	13.95	13.95	10.00
Range set	Kromex	3 pc. set	1	120	2.89	2.89	3.79	1.95
Razors, electric	Remington	Deluxe 60 razor	8 3/4	1,050	29.50	29.50	27.50*	19.17
	Schick	Custom electric razor	8 1/2	1,020	28.75	28.75	27.50*	21.00
Shears	Wiss	Dressmaking shears 7"	1 1/4	150	4.15	4.40	4.15*	---
		Pinking shears 9"	2 1/2	300	7.95	7.95	7.95	5.30
Toasters	G. E.	Auto. toaster	6 3/4	810	19.95	21.95	19.95	14.50
	Toastmaster	Fully auto. - brown handles deluxe	8 1/4	990	27.50	27.50	27.50	21.40
Wagon	Greyhound	Steel Wagon-spec. 30 x 13½ x 3½	2	240	7.98	5.59	7.98	---
Watches	Bulova	"Director" 10K - 17 jewel	10	1,200	35.75	35.75	35.75	28.60
		"Miss America" 10K - 17 jewel	10	1,200	35.75	35.75	35.75	28.60
	Timex	"Cinderella" for girls	2 1/4	270	6.95	7.65	6.95	5.55
		Avg. Value Per Book			$ 3.38	$ 3.36	$ 2.80 1/ $ 3.42 2/	$ 2.54
		Avg. Value Per Book as Percent of purchases			2.8%	2.8%	2.3% 1/ 2.9% 2/	2.1%

1/ Adv. specials - 8 items
2/ Reg. Shelf price - 52 items

[fol. 1056] DEFENDANT'S EXHIBIT 5-A

LAKESIDE SUPER MARKET 7531 North May
Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register detail tape:

DESCRIPTION OF ITEM		LAKESIDE RETAIL PRICE	SAFEWAY RETAIL PRICE
8 oz.	Ballard Biscuits	2/17*	2/17
300	Kleenix	3/69	@.19
¼#	Lipton O.P. Tea	.30*	.30
½#	Chicken of Sea Chuck Tuna	.32*	.32
4 2/3 oz	Gerger Baby Food	3/25*	3/25
No. 2½	Libby Sliced Peaches	.29	.28
" 300	Ocean Spray Cranberrys	.20*	.20
" 303	Lesueur Early Peas	.24**	.25
4 oz	Libby Vienna Sausage	2/33*	2/33
	Look Magazine	.20	
	Tax	.06	
		$3.05	

B. $6.00 "Everedy" Coupons were received on total purchase, except for Sales Tax.

I, the Undersigned, do certify the action described in Sections A and B above was performed on September 8, 1954.

MAZEL M. SECAT

* These items are the same retail price as Safeway's retail price.

** This item is under Safeway's retail price.

Vienna Sausage (Libby) and Lesueur Early Peas were not on list furnished by Safeway but purchases were made as these items were on sale "Special". Safeway retail prices were checked on these items on the above date.

REPORTER'S NOTE:

One (1) $5.00 "EVEREDY" Coupon, and one (1) $1.00 "EVEREDY COUPON" attached. Also, cash register tape attached, showing "LAKESIDE SUPER MARKET, N. MAY AT GRAND BLVD.", itemized, and totaling $3.05.

Box No. 1.

[fol. 1057] DEFENDANT'S EXHIBIT 5-B

LAKESIDE SUPER MARKET 7531 North May
Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register detail tape:

DESCRIPTION OF ITEM		LAKESIDE RETAIL PRICE	SAFEWAY RETAIL PRICE
10#	C & H Sugar	1.03*	1.03
303	Del Monte CS Golden Corn	.15*	.15
"	" " " "	.15*	.15
303	Libby Sliced Peaches	.22***	
14 oz.	Hunts Catsup	.19	.17
8 oz	Ballard & Pillsbury Biscuit	2/17*	2/17
	Celery	.29	
Qt.	Miracle Whip Salad Dress.	.53**	.56
3#	Crisco	.95*	.95
	Giant Oxydol	.73*	.73
5#	Gold Medal Flour	.50*	.50
	Onions	.28	
	Bread	.27	
	Tax	.11	
		$5.57	

B. $11.00 in "Everedy" Coupons were received on total purchase, except for Sales Tax.

I, the Undersigned, do certify that the action described in Sections A and B above was performed on September 8, 1954.

H. J. SECAT

* These items are the same retail price as Safeway's retail price.
** This item is under Safeway's retail price.
*** Through error a 303 size of Libby Peaches was purchased instead of the No. 2½ size listed.

REPORTER'S NOTE:
Two (2) $5.00 "Everredy" Coupons, and one (1) $1.00 "Everredy" Coupon attached. Also attached is detail cash register tape, imprinted at top thereof, "LAKESIDE SUPER MARKET, N. MAY AT GRAND BLVD. SEP 8", and totaling $5.57.

Box No. 1 (A)

[fol. 1058] DEFENDANT'S EXHIBIT 5-C

LAKESIDE SUPER MARKET 7531 N. Western
Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register detail tape:

DESCRIPTION OF ITEM		LAKESIDE RETAIL PRICE	SAFEWAY RETAIL PRICE
10#	C & H Sugar	1.00**	1.03
3#	Crisco	.95*	.95
	Tall Milnot	3/29*	3/29
	Giant Fab	.73*	.73
303	Del Monte CS White corn	.19*	.19
16 oz	Kraft Cheese Whiz	.49*	.49
4 3/4 oz.	Gerger Baby Food	3/25*	3/25
		.19***	
	Tax	.08	
		$4.17	

B. $8.00 in S & H Green Stamps were received on total purchase, except for Sales Tax.

We, the Undersigned, do certify that the action described in Sections A and B above were performed on September 8, 1954.

H. J. SECAT
HAZEL M. SECAT

* These items are the same retail price as Safeway's retail price.
** This item is under Safeway's retail price.
*** We had no item for this .19¢ charge.

REPORTER'S NOTE:
Eighty (8) Green Stamps attached, and also, itemized cash register tape, showing "LAKESIDE SUPER MARKET No. 2, 7306 N. WESTERN, SEP. 8", attached.

Box No. 2

[fol. 1059] DEFENDANT'S EXHIBIT 5-C-a

SCOTT'S THRIFT-T-WISE FOOD MART 25th & S. Central
Oklahoma City, Okla.

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register detail tape:

	DESCRIPTION OF ITEM	SCOTT'S RETAIL PRICE	SAFEWAY RETAIL PRICE	
300	Kleenix	.23	.19	
	Jello Puddings	.08**	.18½	2/17
	" "	.08**	.18½	"
80 Count	Soflin Napkins	.10	None	
	Tax	.01		
		.50		

B. $1.00 in S & H Green Stamps were received on total purchase, except Sales Tax.

I, the Undersigned, do certify that the action described in Sections A and B above was performed on September 8, 1954.

LOLA MAE NORTON

** This item (2 boxes purchased) is under Safeway's retail price.

REPORTER'S NOTE:

Ten (10) Green Stamps attached, and also itemized cash register tape, imprinted at top "SCOTT'S THRIF-T-WISE FOOD MART, 25th and South Central, SEP. 8", totaling 50¢.

Box No. 3 (A)

[fol. 1060] DEFENDANT'S EXHIBIT 5-D

SCOTT'S THRIFT-T-WISE FOOD MART 25th & S. Central
Oklahoma City, Okla.

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register detail tape:

DESCRIPTION OF ITEM		SCOTT'S RETAIL PRICE	SAFEWAY RETAIL PRICE
10#	C & H Sugar	1.03*	1.03
1 doz.	Rolls	.30	
	Tall Milnot	3/29*	3/29
8 oz.	Ballard Biscuits	2/17*	2/17
200	Kleenix	.16 (3/47)	.13
46 oz.	Val Sweet Nectar	.39	.35
4 3/4	Gerber Baby Food	3/25*	3/25
	Tax	.05	
		$2.64	

B. 48 ($4.80) S. & H. Green Stamps were received on total purchase, except Sales Tax.

I, the Undersigned, do certify that the action described in Sections A and B above was performed on September 8, 1954.

* These items are the same retail price as Safeway's retail price.

ONA CHOFFIN

REPORTER'S NOTE:

Forty-eight (48) Green Stamps attached, and also, cash register itemized tape, bearing printing at top, "SCOTT'S THRIFT-T-WISE FOOD MART, 25th and South Central, SEP. 8", totaling $2.64.

Box No. 3 (B)

[fol. 1061] DEFENDANT'S EXHIBIT 5-E

SCOTT'S FOOD MART, INC. No. 2 — 3940 N. W. 10th, Oklahoma City, Okla.

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register detail tape:

DESCRIPTION OF ITEM		SCOTT'S RETAIL PRICE	SAFEWAY RETAIL PRICE
10#	C & H Sugar	1.00**	1.03
	Matches	.10	
200	Kleenix	.13*	.13
	Giant Ec. Tide	.73*	.73
3#	Crisco	.95*	.95
8 oz	Ballard & Pillsbury Biscuit	2/17*	2/17
	Tax	.06	
		$3.14	

B. 60 S & H Green Stamps ($6.00) were received on total purchase, except for Sales Tax.

I, the Undersigned, do certify that the action described in Sections A and B above were performed on September 8, 1954.

HAZEL M. SECAT

* These items are the same retail price as Safeway's retail price.

** This item is under Safeway's retail price.

REPORTER'S NOTE:

Sixty (60) Green Stamps attached, and also attached is cash register itemized tape, imprinted at top, "SCOTT'S FOOD MART, INC. No. 2, 3940 N.W. 10th, SEP. 8", and totaling $3.14.

Box No. 4 (A)

[fol. 1062] DEFENDANT'S EXHIBIT 5-F

MISKOVSKY FOODS

23rd Street & Drexel
Oklahoma City, Okla.

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register detail tape:

	DESCRIPTION OF ITEM	MISKOVSKY'S RETAIL PRICE	SAFEWAY RETAIL PRICE
	Giant Ex. Tide	.73*	.73
3#	Crisco	.95*	.95
10#	C & H Sugar	1.03*	1.03
	Grapes	.38	———
	Hydrox Cookie	.29	*$2.71*
	Tomatoes (fresh)	.38	*.05*
	Tax	.07	———
		———	*13.55¢*
		$3.80	

B. 70 S & H Green Stamps (Trading) were received on total purchase, except for Sales Tax.

I, the Undersigned, do certify that the action described in Sections A and B above were performed on September 8, 1954.

IRENE LAMBERSON

* These items are the same retail price as Safeway's retail price.

REPORTER'S NOTE:

Seventy (70) Green Stamps are attached, and also attached is itemized cash register tape, imprinted at the top thereof, MISKOVSKY FOODS, 23rd STREET & DREXEL, OKLAHOMA CITY, OKLA., SEP. 8", and totaling $3.80.

Box No. 5 (A)

The italicized figures appearing in the table are handwritten notations.

[fol. 1063] DEFENDANT'S EXHIBIT 5-G

MISKOVSKY FOODS

23rd Street & Drexel
Oklahoma City, Okla.

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register detail tape:

DESCRIPTION OF ITEM		MISKOVSKY RETAIL PRICE	SAFEWAY RETAIL PRICE
qt.	Pyrex dish & lid	.59	
7274C	Comet Angel Cake Pan (Alum)	.39	
20 oz.	Zestee Grape Jelly (Decorated Tumbler)	.35	.30
8 oz	Reese Hot Finger Peppers	.31	
4 3/4	Gerber Baby Food	3/25*	3/25
	Tall Milnot	3/29*	3/29
14 oz.	Libby Catsup	.19	
	Metal Waste Basket	.69	
	Tax	.09	
		$4.44	

B. 86 S & H Green Trading Stamps were received on total purchase, except for sales Tax.

I, the Undersigned, do certify that the action described in Sections A and B above were performed on September 8, 1954.

HAZEL M. SEACAT

* These items are the same retail price as Safeway's retail price.

REPORTER'S NOTE:

Eighty-six (86) Green Stamps attached, and also attached is cash register tape, with marking at top thereof, "MISKOVSKY FOODS, 23rd and Drexel, Oklahoma City, Okla, SEP. 8", totaling $4.44

Box No. 5 (B)

[fol. 1064] DEFENDANT'S EXHIBIT 5-H

CORSIN'S GROCERY 1727 N. W. 16th St.
Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register detail tape:

	DESCRIPTION OF ITEM	CORSIN'S RETAIL PRICE	SAFEWAY RETAIL PRICE
	Giant Ec. Vel	.73*	.73
10#	C & H Sugar	1.03*	1.03
4 3/4	Gerber Baby Food	3/25*	3/25
	Tall Milnot	3/29*	3/29
	Radishes	.10	
	Celery	.29	
	No Tax	$2.69	

B. 50 S & H Green Trading Stamps were received on total purchase and no Sales Tax was charged. (See Tape)

I, the Undersigned, do certify that the action described in Sections A and B above were performed on September 8, 1954.

* These items are the same retail price as Safeway's retail price.

ONA CHOFFIN

REPORTER'S NOTE:

Fifty (50) Green Stamps attached, and also attached is cash register tape, imprinted at top, "CORSIN'S GROCERY, SEP. 8", and totaling $2.69.

Box No. 6 (A)

[fol. 1065] DEFENDANT'S EXHIBIT 5-I

CORSIN'S GROCERY

1727 N. W. 16th St.
Oklahoma City, Okla.

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register detail tape:

DESCRIPTION OF ITEM		CORSIN'S RETAIL PRICE	SAFEWAY RETAIL PRICE	
303	Del Monte CS White corn	.18**	.19	
	Jello Pudding	.08**	.08½	
	" "	.08**	.08½	(2/17)
	Giant Ec. Oxydol	.73*	.73	
	No Tax ..	$1.07		

B. 20 S & H Green Trading Stamps were received on total purchase and no sales Tax was charged.

I, the Undersigned, do certify that the action described in Sections A and B above were performed on September 8, 1954.

LOLA MAE NORTON

* This item is the same retail price as Safeway's retail price.

** These items are under Safeway's retail price.

REPORTER'S NOTE:

Twenty (20) Green Stamps attached, and also attached is cash register tape, inscribed at the top thereof, "CORSIN'S GROCERY, SEP. 8", totaling $1.07.

Box No. 6 (B)

[fol. 1066] DEFENDANT'S EXHIBIT 5-J

GREENHAW'S MARKET No. 2 Midwest City Oklahoma

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register detail tape:

DESCRIPTION OF ITEM		GREENHAW'S RETAIL PRICE	SAFEWAY RETAIL PRICE
	Giant Ec. Tide	.73*	.73
	Bond Bread	.19	
Qt.	Miracle Whip Salad Dress.	.55	.56
	Jello Pudding (2 Boxes)	.19	2/17
303	Del Monte CS Golden Corn	2/35	@.15
16 oz.	Kraft Cheese Whiz	.49*	.49
	Tax	.05	
		$2.54	

B. No S & H Green Trading Stamps were received with this purchase, as the check girl made the remark to another employee that something was wrong with the cash register and in the confusion no Green Stamps were received for this purchase. After checking the items purchased it was noted that the top of the cash register receipt, indicating the name of the store was torn off. In checking with the other lady that made a purchase at this store, it was also noted that the name of the store was missing from the tape; so evidently, that was what was wrong with the cash register.

I, the Undersigned, do certify that the action described in Sections A and B above were performed on Sept 8, 1954.

LOLA MAE NORTON

* These items are the same retail price as Safeway's retail price.

REPORTER'S NOTE:

Attached is a slip which appears to be a cash register tape, listing the same itemized amounts as is listed under "GREENHAW'S RETAIL PRICE" above, and totaling $2.54

Box No. 7 (A)

[fol. 1067]

DEFENDANT'S EXHIBIT 5-K

GREENHAW'S MARKET No. 2 Midwest City, Oklahoma

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register detail tape:

	DESCRIPTION OF ITEM	GREENHAW'S RETAIL PRICE	SAFEWAY RETAIL PRICE
	Tablet	.10	
3#	Crisco	.97	.95
	Giant Ec. Vel	.71**	.73
	Cauliflower	.22	
	Cantalope	.29	
	Tax	.94	
		$2.33	

B. 23 S & H Green Trading Stamps were received with this purchase, except Sales Tax. Only single S & H Green Stamps were given with this purchase, even though the purchase was made on Double S & H Green Stamp day.

I, the Undersigned, do certify that the action described in Sections A and B above were performed on September 8, 1954.

ONA CHOFFIN

** This item under the retail price of the Safeway.

REPORTER'S NOTE:

Twenty (20) Green Stamps attached, and also attached is cash register tape (no name) totaling $2.33.

Box No. 7 (B)

[fol. 1068]

Defendant's Exhibit 5-L

Speeds' Food Market No. 1 — 36th & N: Shartel
Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register detail tape:

	DESCRIPTION OF ITEM	SPEED'S RETAIL PRICE	SAFEWAY RETAIL PRICE
	Giant Ec. Tide	.73*	.73
	" " Vel	.73*	.73
	Bread	.22	
	Tall Milnot	3/29*	3/29
303	Del Monte CS Golden Corn	.15*	.15
303	Del Monte CS Golden Corn	.15*	.15
½#	Chicken of Sea Chunk Tuna	.33	.32
303	Giant Green Pea	.19*	.19
4 3/4	Gerber Baby Food	3/25*	3/25
	Tomatoes (fresh)	.19	
	Tax	.06	
		$3.29	
		05	
		16.45¢	

B. 64 S & H Green Trading Stamps were received on total purchase, except Sales Tas.

We, the Undersigned, do certify that the action described in Sections A and B above were performed on September 8, 1954.

Ona Choffin
Lola Mae Norton

* These items are the same retail price as Safeway's retail price.

The italicized figures appearing in the table are handwritten notations.

REPORTER'S NOTE:

Sixty-four (64) Green Stamps attached, and also attached is cash register tape (itemized) bearing printing at top "SPEED'S SUPER FOOD MARKET No. 1, SEP 9", and totaling $3.29.

Box No. 8 (A)

[fol. 1069] DEFENDANT'S EXHIBIT 5-M

THRIF-T-WISE No. 2

4901 North May
Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register detail tape:

DESCRIPTION OF ITEM		THRIF-T-WISE RETAIL PRICE	SAFEWAY RETAIL PRICE
	Tall Milnot	3/29*	3/29
	Giant Ec. Tide	.73*	.73
Qt	Buttermilk	.21	
	Bannannas	.40	
	Cantalope	.37	
	Cottage Cheese	.21	
5/8 oz	Lipton Tea Bags	.12*	.12
3#	Crisco	.95*	.95
4 3/4	Gerber Baby Food	3/25*	3/25
22 oz	Brooks Bar-B-Que Sauce	.59	
16 oz.	Kraft Cheese Whiz	.49*	.49
No. 2	Libby Sliced Pineapple	.29*	.29
	All Purpose Rit	.25	
	" " "	.25	
	Candy	.29	
10#	C & H Sugar	1.03*	1.03
20 oz.	Zestee Balckberry Presv. (Decorated Tumbler)	.49	
200	Kleenix	.13*	.13
	Tax	.15	
		$7.49	

B. 148 S & H Green Trading Stamps were received on the total purchase, except for Sales Tax.

I, the Undersigned, do certify that the action described in Sections A and B above were performed by me on September 8, 1954.

HAZEL M. SEACAT

* These items are the same retail price as Safeway's retail price.

REPORTER'S NOTE:

One-Hundred-Forty-Eight (148) Green Stamps attached, and also attached is cash register tape, imprinted at top, THRIFT-T-WISE SUPER MARKET, 4901 N. May, SEP 8", itemized, and totaling $7.49. At bottom appears the words "WE GIVE GREEN STAMPS".

Box No. 9

[fol. 1070]

DEFENDANT'S EXHIBIT 5-N

FAIRWAY THRIFT-T-WISE 4205 N. MacArthur
Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register detail tape:

DESCRIPTION OF ITEM		FAIRWAY THRIFT-T-WISE RETAIL PRICE	SAFEWAY RETAIL PRICE
10#	Crisco	.95*	.95
16 oz.	Kraft Cheese Whiz	.49*	.49
	Tall Milnot	3/29*	3/29
4 3/4	Gerber Baby Food	3/25*	3/25
	Tax	.04	
		$2.02	

B. 38 S & H Green Trading Stamps were received on total purchase, except Sales Tax.

We, the Undersigned, do certify that the action described in Sections A and B above were performed by us on September 8, 1954.

H. J. SEACAT
HAZEL M. SEACAT

* These items are the same retail price as Safeway's retail price.

REPORTER'S NOTE:

Thirty-Eight (38) Green Stamps attached, and also attached is cash register tape, bearing words at top thereof, "FAIRWAY FOOD STORE, 4205 N. MacArthur, SEP 8", itemized, totaling $2.02

Box No. 10

[fol. 1071]

DEFENDANT'S EXHIBIT 5-O

SPEED'S FOOD MARKET No. 3 — 1218 N. Pennsylvania, Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register tape:

	DESCRIPTION OF ITEM	SPEED'S NO. 3 RETAIL PRICE	SAFEWAY RETAIL PRICE
	Giant Ec. Tide	.73*	.73
	Giant Ec. Oxydol	.73*	.73
	Jello Pudding	3/25**	2/17
16 oz	Kraft Cheese Whiz	.49*	.49
303	Libby CS Golden Corn	.19	
303	Giant Green Pea	.19*	.19
	Tax	.05	
		$2.63	

B. 51 S & H Green Trading Stamps were received on the total purchase, except for Sales Tax.

I, the Undersigned, do certify that the action described in Sections A and B above were performed on September 8, 1954.

LOLA MAE NORTON

* These items are the same retail price as Safeway's retail price.

** This item is under Safeway's retail price.

REPORTER'S NOTE:

Fifty-One (51) Green Stamps attached, and also attached is cash register tape, bearing the words at top thereof, "SPEED'S SUPER FOOD MART No. 3, SEP 8", itemized, and totaling $2.63.

Box No. 11 (A)

[fol. 1072]

DEFENDANT'S EXHIBIT 5-P

SPEED'S FOOD MARKET No. 3 — 1218 N. Pennsylvania, Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register tape:

DESCRIPTION OF ITEM		SPEED'S NO. 3 RETAIL PRICE	SAFEWAY RETAIL PRICE
4 3/4	Gerber Baby Food	3/25*	3/25
	Tall Milnot	3/29*	3/29
10#	C & H Sugar	1.03*	1.03
	Giant Ec. Vel	.73*	.73
	3 ears corn	.25	
	Tax	.05	
		$2.60	

B. 50 S & H Green Trading Stamps were received on total purchase, except for Sales Tax.

I, the Undersigned, do certify that the action described in Sections A and B above were performed on September 8, 1954.

ONA CHOFFIN

* These items are the same retail price as Safeway's retail price.

REPORTER'S NOTE:

Fifty (50) Green Stamps attached, and also attached is cash register tape, bearing printing at top thereof, "SPEED'S SUPER FOOD MKT. No. 3, SEP 8", itemized, and totaling $2.60.

Box 11 (B)

[fol. 1073] DEFENDANT'S EXHIBIT 5-Q

RALPH'S GROCERY

914 N. E. 8th St.
Oklahoma City, Oklahoma

A. The following items were purchased and paid for but no itemized cash register detail tape was given:

	DESCRIPTION OF ITEM	RALPH'S GROCERY RETAIL PRICE	SAFEWAY RETAIL PRICE
	Giant Ec. Oxydol	.73*	.73
#3	Crisco	.95*	.95
	Tax	.03	
		$1.71	

B. 33 S & H Green Trading Stamps were received on total purchase, except for Sales Tax.

I, the Undersigned, do certify that the action described in Sections A and B above were performed on September 8, 1954.

IRENE LAMBERSON

* These items are the same retail price as Safeway's retail price.

This is a store in the colored section of Oklahoma City that caters colored trade almost exclusively. This store carried very few brands of the items which Safeway had listed and in general they were higher than Safeway in prices and in running the entire list, we found only the two items where the retail price was the same as Safeway's.

It was near closing tiie when this purchase was made and they were changing the tape on the cash register, therefore, no tape was given me and I could not insist on one since only two items were purchased.

REPORTER'S NOTE:

Thirty-three (33) Green Stamps attached.

Box No. 12

[fol. 1074]

DEFENDANT'S EXHIBIT 5-R

SPENCER'S SUPER MARKET NO. 2

4000 S. E. 15th
Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register detail tape:

DESCRIPTION OF ITEM		SPENCER'S NO. 2 RETAIL PRICE	SAFEWAY RETAIL PRICE
10#	C & H Sugar	1.03*	1.03
26 oz.	Morton Salt	.10*	.10
3#	Crisco	.95*	.95
2	Tall Milnot	2/19**	( )
4 3/4	Gerber Baby Food	3/25*	3/25
1	Tall Milnot	.10	(3/29)
½#	Chicken of Sea Chunk Tuna	.35	.32
200	Kleenix	.13*	.13
	(No Item)	.25	
	Tax	.07	
		$3.42	

B. 66 Chips Saving Stamps were received on total purchase, except for Sales Tax.

I, the Undersigned, do certify that the action described in Sections A and B above were performed on September 8, 1954.

ONA CHOFFIN

* These items are the same retail price as Safeway's retail Price.

** This item is under the Safeway's retail price.

REPORTER'S NOTE:

Sixty-six (66) "CHIPS Saving Stamps" attached, and also attached is cash register tape, bearing printing at top thereof, "SPENCER'S SUPER MARKET No. 2, 4000 S. E. 15th, SEP 8", itemized, and totaling $3.42.

Box 13 (A)

[fol. 1075]

Defendant's Exhibit 5-S

Spencer's Super Market No. 2

4000 S. E. 15th
Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register detail tape:

	DESCRIPTION OF ITEM	SPENCER'S NO. 2 RETAIL PRICE	SAFEWAY RETAIL PRICE
	Wonder Bread	.18	
	Giant Ec. Tide	.73*	.73
Qt.	Miracle Whip Salad Dress.	.53**	.56
16 oz.	Kraft Wheese Whiz	.49*	.49
303	Del Monte CS Golden Corn	.17	.15
	Tax	.04	
		$2.14	

B. 43 Chips Saving Stamps were received on total purchase, except for Sales Tax.

I, the Undersigned, do certify that the action described in Sections A and B were performed on September 8, 1954.

Lola Mae Norton

* These items are the same retail price as Safeway's retail price.

** This item is under Safeway's retail Price.

Reporter's Note:

Forty-three (43) Chips Saving Stamps attached, and also attached is cash register tape, with printing at top thereof "Spencer's Super Market No. 2, 4000 S. E. 15th, Sep 8", itemized, and totaling $2.14.

Box No. 13 (B)

[fol. 1076] DEFENDANT'S EXHIBIT 5-T

HAGEE'S GROCERY & MARKET 1803 N. E. 23rd
Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register detail tape:

DESCRIPTION OF ITEM		HAGEE'S RETAIL PRICE	SAFEWAY RETAIL PRICE
10#	C & H Sugar	1.03*	1.03
5 oz.	Swanson Bone Chicken	.31*	.31
3#	Crisco	.95*	.95
26 oz.	Morton Salt	.10*	.10
16 oz.	Kraft Cheese Whiz	.49*	.49
	Giant Tide	.73*	.73
	Kotex	.39	
½#	Chicken of Sea Chunk Tuna	.32*	.32
¼#	Lipton O. P. Tea	.30*	.30
	Tax	.09	
		$4.71	

B. This store redeems Cash Register Receipts on premiums such as aluminum ware, electric roasters, beverage sets, dishes etc., for an example: $40.00 in cash register receipts and .39¢ cash one could get one aluminum pie pan.

I, the Undersigned, do certify that the action described in Sections A and B above were performed on September 8, 1954.

IRENE LAMBERSON

* These items are the same retail as Safeway's retail Price.

REPORTER'S NOTE:

Attached is cash register tape, with printing at top thereof, "HAGEE'S GROCERY AND MARKET, 1803 N.E. 23rd, Phone 56-4011,", itemized, and totaling $4.71.

Box No. 14 (A)

[fol. 1077] DEFENDANT'S EXHIBIT 5-U

HAGER'S GROCERY & MARKET 1803 N. E. 23rd
Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register detail tape:

DESCRIPTION OF ITEM		HAGEE'S RETAIL PRICE	SAFEWAY RETAIL PRICE
½ gal	Homo. A Milk	.47	
Qt.	Miracle Whip Salad Dress.	.56*	.56
303	Del Monte Sugar Peas	.18**	.19
303	Del Monte CS Golden Corn	.15*	.15
	Tall Milnot	3/29*	3/29
303	Giant Green Pea	.19*	.9
	Fig Newton cookie	.32	
	Peaches (fresh)	.37	
	Tax	.05	
		$2.58	

B. This store redeems Cash Register Receipts on premiums such as aluminum ware, electric roaster, beverage sets, dishes, etc, for example: $40.00 in cash register receipts and 39¢ cash one could get one aluminum pie pan.

I, the Undersigned, do certify that the action described in Sections A and B above were performed on September 8, 1954.

HAZEL M. SEACAT

* These items are the same retail price as Safeway's retail price.

** This item is under the Safeway's retail price.

REPORTER'S NOTE:

Attached is Cash Register Tape, bearing printing at top thereof, "HAGEE'S GROCERY AND MARKET, 1803 N. E. 23rd, Phone 58-4011", itemized, and totaling $2.58.

Box 14 (B)

DEFENDANT'S EXHIBIT 6

[fol. 1078]

THE FLEMING COMPANY

IGA

Supply Depot

Phones { JA 5-3565 JA 5-9554

WHOLESALE FOOD DISTRIBUTORS 3501-3541 N. Santa Fe

Name

Address

Oklahoma City, Okla. No. September 13, 1954

IGA

Supply Depot

FRENCH DRESSING

TANGY and ZESTFUL

146 Duncan Hines # 1 Smooth 35
Ca. 12 8 oz. 3.45 29% -011

147 Duncan Hines # 2 Tart 35
Ca. 12 8 oz. 3.45 29% -011

148 Durkee's, Non-Separating 35
Ca. 12 8 oz. 1.99 29½% -011

149 Roquefort Salad, Harper's 35
Ca. 12 8 oz. 4.10 29½% -013

INDIAN GRILL

Italian Style
SALAD DRESSING

151 Indian Grill 37
Ca. 12 8 oz. 3.89 18½% -013

152 Milani 1880 35
Ca. 24 8 oz. 6.67 29½% -023

153 Beverly's Sno-White, F.T. 35
Ca. 12 pt. 4.99 29½% -023

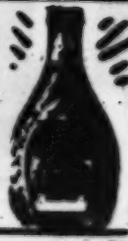
154 Beverly's Sno-White, F.T. 35
Ca. 24 8 oz. 5.89 16½% -020

Italian Style
WISH-BONE
Salad Dressing

R 155 Wish-Bone, Italian Style 33
Ca. 24 8 oz. 7.39 9% -020

156 Wishbone Salad Dressing 47
Ca. 12 16 6.49 29½% -020

DELUXE
A Chef Franchis
CREATION



R 157 Wishbone Deluxe 35
Ca. 24 8 oz. 5.89 6½% -025

SALAD VINEGARS

159 Schilling Red Wine 37
Ca. 12 10 oz. 2.25 30½% -018

N 160 Schilling Red Wine Garlic 27
Ca. 12 10 oz. 2.23 30½ -018

KRAFT DRESSINGS

174 Miracle Whip Dressing 20
Ca. 12 8 oz. 2.15 29% -011

176 Miracle Whip Dressing 35
Ca. 12 pint 3.89 11% -020

178 Miracle Whip Dressing 35
Ca. 12 qt. 5.95 7% -020

179 Miracle Whip Dressing 35
Ca. 4 gallon 7.89 29½% -020

181 Miracle Sandwich Spread 35
Ca. 12 8 oz. 2.25 29½% -011

183 Miracle Sandwich Spread 35
Ca. 12 16 oz. 3.85 27½% -020

185 Miracle Sandwich Spread 65
Ca. 6 quart 5.89 19% -017

188 Kraft Mayonnaise 37
Ca. 12 8 oz. 2.69 21% -011

190 Kraft Mayonnaise 65
Ca. 12 16 oz. 4.89 29½% -020

192 Kraft Mayonnaise 70
Ca. 6 32 oz. 5.89 19% -017

194 Kraft French Dressing 35
Ca. 12 8 oz. 2.69 24½% -011

196 Miracle French Dressing 35
Ca. 12 8 oz. 2.69 24½% -011

198 Kraft French Dressing 65
Ca. 6 16 oz. 4.79 29% -017

199 Chutne French Dressing 35
Ca. 12 8 oz. 2.15 29% -011

DOMEY—PRESERVES—JELLIES
APPLE AND PEANUT BUTTER

APPLE BUTTER

210 IGA Pure 30
Ca. 12 26 oz. 3.89 21½% -021

212 Mottos 19
Ca. 12 20 oz. 2.65 19% -020

MA BROWN JAMS-JELLIES-PRESERVES

MA BROWN
Preserves

TO 219 Ma Brown Grape Jelly 19
Ca. 12 9 oz. 1.89 17% -013

220 Ma Brown Apple 21
Ca. 12 12 1.94 23% -015

221 Ma Brown Grape 25
Ca. 12 12 2.26 23% -015

224 Ma Brown Cherry Jelly 25
Ca. 12 12 2.67 23% -015

230 Ma Brown Black Raspberry Jelly 47
Ca. 12 12 oz. 4.19 29% -015

231 Ma Brown Plum Jelly 25
Ca. 12 12 oz. 2.91 29% -015

232 Ma Brown Red Currant Jelly 25
Ca. 12 12 oz. 2.91 29½% -015

233 Ma Brown Elderberry Jelly 27
Ca. 12 12 oz. 2.26 27% -015

235 Ma Brown Apricot Preserves 31
Ca. 12 12 oz. 2.76 29½% -015

236 Ma Brown Blackberry Preserves 25
Ca. 12 12 oz. 2.13 29% -015

237 Ma Brown Boysenberry Preserves 25
Ca. 12 12 oz. 2.67 29½% -015

238 Ma Brown Plum Preserves 25
Ca. 12 12 oz. 2.21 29% -015

239 Ma Brown Red Cherry Preserves 27
Ca. 12 12 oz. 2.67 29½% -015

240 Ma Brown Pineapple Preserves 31
Ca. 12 12 oz. 2.70 29½% -015

241 Ma Brown Apricot Pineapple Preserves 29
Ca. 12 12 oz. 2.61 29½% -015

242 Ma Brown Peach Preserves 31
Ca. 12 12 oz. 2.70 29½% -015

243 Ma Brown Boysenberry preserves 31
Ca. 12 12 oz. 2.67 29% -015

244 Ma Brown Black Raspberry Preserves 45
Ca. 12 12 oz. 4.59 29% -015

245 Ma Brown Blueberry 25
Ca. 12 12 2.77 19½% -015

246 Ma Brown Orange Marmalade 25
Ca. 12 12 2.61 29% -015

247 Ma Brown Apricot Preserves 45
Ca. 12 21 oz. 4.19 29% -020

251 Ma Brown Strawberry Preserves 47
Ca. 12 21 oz. 4.19 29½% -020

252 Ma Brown Cherry Preserves 45
Ca. 12 21 oz. 4.19 29½% -020

255 Ma Brown Peach Preserves 45
Ca. 12 21 oz. 4.59 29% -020

256 Ma Brown Plum Preserves 35
Ca. 12 21 oz. 3.09 21% -015

257 Ma Brown Pepple Preserves 45
Ca. 12 21 oz. 4.19 29% -020

259 Ma Brown Strawberry preserves 35
Ca. 12 21 oz. 3.11 19½% -020

260 Ma Brown Apple Jelly 25
Ca. 12 21 2.17 29% -020

261 Ma Brown Grape Jelly 25
Ca. 12 21 3.09 29% -021

JAM

265 IGA Grape 37
Ca. 12 24 3.44 23½% -020

266 Ma Brown Grape 25
Ca. 12 12 2.26 21% -015

267 Ma Brown Grape 37
Ca. 12 21 oz. 3.45 21½% -020

268 Welch Grapelade 25
Ca. 24 10 oz. 4.69 16½% -020

269 Welch Grapelade 35
Ca. 12 20 oz. 3.45 18% -020

270 Good Value Grape 25
Ca. 12 20 oz. 2.94 18½% -020

JELLIES

274 IGA Grape, Tumblers 21
Ca. 24 12 oz. 4.16 17½% -023

276 IGA Black Raspberry 25
Ca. 24 12 oz. 3.89 29% -020

277 Apple, IGA 19
Ca. 24 12 oz. 3.89 23% -020

278 Heleum Cinnamon 27
Ca. 24 10½ oz. 3.89 23% -020

279 Welch Grape, Dec. Tumbler 21
Ca. 24 10 oz. 4.69 8½% -020

280 Welch Grape 35
Ca. 12 20 oz. 3.45 18% -020

284 Tea Garden Black Raspberry 45
Ca. 12 12 oz. 3.85 29% -015

286 Blackberry, Tea Garden 25
Ca. 12 12 oz. 3.09 23% -015

287 Concord Grape, Tea Garden 25
Ca. 12 12 oz. 2.34 18½% -015

PINEAPPLE JUICE

907	IGA Ca. 24 12	2.28	17½%		2/23 -026
TO 908	IGA Ca. 12 46 oz.	2.69	14½%		35 -047
901	Del Monte Ca. 24 211	2.33	19%		2/23 -026
904	Del Monte Ca. 12 46 oz.	2.66	12%		35 -047

PINEAPPLE JUICE DRINK HAWAIIAN SUNSHINE

906	Libby Ca. 24 12 oz.	2.28	14½%		2/23 -026
907	Libby 12 46 oz.	2.64	8%		33 -047
909	House of George Ca. 12 46	2.18	19%		31 -047

PRUNE JUICE

904	Sunsweet (Tins) Ca. 24 12 oz.	2.27	17½%		18 -026
909	Sunsweet Ca. 12 qt.	2.54	7½%		33 -047
910	Del Monte Ca. 12 qt.	2.69	23%		37 -047

TOMATO JUICE

930	IGA Ca. 12 46 oz.	2.68	15½%		2/33 -047
932	Campbell's Ca. 48 13½ oz.	4.58	17%		2/25 -028
933	Campbell's Ca. 12 46 oz.	2.33	16½%		35 -047
934	Hunt's Ca. 48 300	3.89	18½%		10 -060

TWICE RICH Libby's TOMATO JUICE

935	Libby Ca. 48 300	4.58	13%		2/31 -060
937	Libby Ca. 12 46 oz.	2.67	12%		39 -047
938	Hunt's Ca. 12 46	2.32	12½%		37 -047
940	Del Monte Ca. 24 2	2.89	20%		2/37 -028
941	Del Monte Ca. 12 46	2.89	16½%		39 -047
942	House of George Ca. 12 46 oz.	2.89	17½%		34 -047

VEGETABLE JUICE

952	V-8 Cocktail Ca. 48 12 oz.	5.68	19½%		13 -048
953	V-8 Cocktail Juice Ca. 12 46	2.87	8%		35 -045

APRICOT NECTAR

957	IGA Ca. 24 12	2.44	18½%		2/35
959	Libby's Ca. 24 211	2.53	19%		13 -026
960	Del Monte Ca. 24 211	2.53	19%		15 -026
961	IGA Fancy Ca. 12 46 oz.	2.57	22%		41 -047
962	Del Monte Ca. 12 46	2.59	23%		45 -047
965	Libbys Ca. 12 46	2.57	23%		45 -047

PEACH NECTAR

969	Libby Ca. 24 211	2.42	25%		2/27 -026

PEAR NECTAR

970	Libby Ca. 24 211	2.53	23%		2/27 -026

CANNED FRUIT—BERRIES

APPLE SAUCE

976	IGA Ca. 24 303	3.23	25½%		18 -031

VB EXTRA FANCY QUALITY APPLE SAUCE IN THE GOLD LABEL CAN

980	V B Ca. 24 303	4.58	9%		21 -031

CRANBERRY SAUCE

982	Ocean Spray Ca. 48 7 oz.	4.59	24%		12 -026
983	Ocean Spray, Strained Ca. 24 300	4.59	8½%		25 -060
984	Whole, Ocean Spray Ca. 24 300	4.59	8½%		25 -060

APPLES

985	Comstock Sli. Pie Ca. 24 2	5.58	14%		27 -026

BOYSENBERRIES

989	Hunt's Ca. 24 2	6.86	25½%		29 -026
990	Steele in Hvy. Syp. Ca. 24 303	5.13	28½%		29 -031
R 991	Del Monte Ca. 12 303 glass	2.57	17½%		33 -021

BLUEBERRIES

WYMAN'S The Finest BLUEBERRIES

993	Wyman's (40 Deg. Syrup) Ca. 24 300	5.89	24½%		25 -060

GOOSEBERRIES

997	Flaver Pack. in hvy. syp. Ca. 24 303	4.61	26%		27 -031

BLACKBERRIES

1002	Rainbow Ca. 24 303	4.84	21½%		28 -031

STRAWBERRIES

1010	Stillwell in Hvy. Syrup Ca. 24 300	5.15	30%		29 -029

APRICOTS

1012	IGA Ripe 'n Ragged Ca. 24 303	4.64	23%		25 -031
1014	IGA Ripe 'n Ragged Ca. 24 2½	1.38	23%		29 -054
1023	Libby's Halves, Unpeeled Ca. 48 Buf.	5.57	26½%		17 -033
1024	Libby's Halves, Unpeeled Ca. 24 303	4.89	20%		25 -031
1027	Del Monte Halves Ca. 24 303	4.89	24½%		27 -031
1029	Halves, Unpeeled, Del Monte Ca. 24 2½	1.89	27%		43 -054
1031	Fargo Irr. Halves, Hvy. Syp. Ca. 24 2½	1.68	24%		23 -054
TO 1033	Good Value Halves Ca. 24 2½	1.56	23%		29 -054
1033	Rainbow Water Ca. 6 10	4.68	16%		22 -043
1036	Hunt's Unpeeled Whole Ca. 48 300	6.22	25½%		17 -060
1037	Hunt's Whole Unpeeled Ca. 24 2½	1.21	17%		31 -054
1043	Libby's Halves, Unpeeled, H. S. Ca. 24 2½	1.78	8%		35 -054

RED, SOUR PITTED CHERRIES

1061	IGA Ca. 24 303	5.13	14%		25 -031

Sturgeon Bay RED SOUR PITTED CHERRIES

1062	Sturgeon Bay Ca. 24 303	5.16	14%		25 -031
1074	Rainbow Ca. 6 10	4.51	15½%		140 -017

ROYAL ANN CHERRIES

1078	Libby's Ca. 48 Buf.	7.85	29%		35 -043
1080	IGA Choice Ca. 24 303	4.58	22½%		25 -031
1082	Del Monte Ca. 12 303 gls.	2.73	29%		30 -021
1085	Libby's Ca. 24 303	4.89	23%		27 -031

N	1398	Good Value, Light Syrup Ca. 24 2½		7.69	21%	39 -004
W	1399	Cut-Top Irreg. Bartlett Ca. 24 2½		8.99	18½%	33 -004

PINEAPPLE

	1396	IGA Fcy. Crushed Ca. 48 Sqt.		8.69	21½%	18 -033
	1370	IGA Fcy. Sliced Ca. 48 Sqt.		8.69	23%	18 -033
WD	1371	IGA Ripe 'n Ragged Chunks Ca. 24 2		8.69	11½%	39 -033
	1372	IGA Sliced Ca. 24 2		6.22	10½%	39 -033
WD	1397	IGA Crushed Ca. 24 2		8.44	19%	37 -033
WD	1394	IGA Ripe 'n Ragged Chunk Ca. 24 2½		8.99	21½%	37 -004

LIBBY'S FRESH
Packed
HAWAIIAN PINEAPPLE

	1392	Libby's Crushed Ca. 48 Sqt.		8.69	19%	16 -033
	1393	Sliced, Libby's Ca. 48 1		6.99	9%	16 -037
	1516	Libby Cru. Ca. 24 2		6.22	4½%	39 -031
	1517	Libby Sliced 24 2		6.69	6½%	39 -033
	1518	Libby Chunk 24 2		6.97	7%	39 -033
	1519	Libby's Sliced Ca. 24 1½ Sqt.		4.69	20%	39 -037
	1520	Sweet Treat Cru. Ca. 24 303		6.99	20%	39 -031
	1521	Del Monte Chunk Ca. 24 211		5.69	20½%	31 -033
	1522	Sliced, Del Monte Ca. 48 1 Sqt.		6.69	17½%	3/19 -037
	1523	Del Monte Crushed Ca. 48 Sqt.		6.81	19%	31 -033
	1524	Crushed, Del Monte Ca. 24 2		6.69	18½%	39 -033
	1525	Del Monte Cru. Ca. 24 2½		6.97	21½%	39 -004
	1526	Sliced, Del Monte Ca. 24 2		6.97	18½%	39 -033
	1527	Del Monte Sliced Ca. 24 2½		7.81	20%	39 -004
	1528	Libby Crushed Ca. 6 10		6.69	17%	118 -047

PRUNE PLUMS

	1529	Oregon Blue Hvy. Syp. Ca. 46 11 oz.		4.69	23%	19 -042
	1530	IGA Italians Ca. 24 2½		4.69	19%	39 -004
	1531	Sun-Ripe Ca. 24 2½		5.69	9½%	39 -004
◆	1397	White Tag Water Purple Ca. 6 10		5.19	23%	39 -047

STEWED PRUNES

CANNED VEGETABLES

ASPARAGUS

	1400	IGA Cut All Green Ca. 24 pic.		3.69	22½%	21 -025
	1401	Del Monte Cut & Tip All Grn. Ca. 48 buf.		8.35	24½%	23 -035
	1402	Del Monte, Mary Washington Ca. 24 300		7.85	22½%	43 -029
	1403	IGA Whole All Green Spears Ca. 24 303		7.79	23%	43 -030
	1404	Winslow Fcy. Cut Spears Ca. 48 1		8.37	23%	23 -042
	1405	Winslow Fcy. Cut Spears Ca. 24 303		5.42	22½%	29 -030
	1406	IGA Cut All Green Ca. 24 300		5.11	26½%	29 -030
	1407	Del Monte, Early Garden Ca. 48 Pic.		11.69	23%	31 -042
	1409	Libby All Green Spears Ca. 48 1		10.69	24%	37 -042
	1410	Libby All Grn Spears Ca. 24 300		7.69	23½%	43 -030
	1411	Del Monte, Early Garden Ca. 24 300		8.15	26%	37 -031
	1412	Del Monte Early Garden Giant Ca. 24 2		8.19	27½%	33 -033
	1413	Rochelle Selective All Green Cut Spears Ca. 48 1		6.69	24%	19 -042

GREAT NORTHERN

	1414	Allen Ca. 24 300		1.77	23½%	2/19 -031

BLACKEYE PEAS

	1415	Dry, Allen Ca. 24 300		1.77	23½%	2/19 -030
	1416	First Pick, Fresh Ca. 46 300		4.69	27%	2/29 -030
	1417	Allen, Crowder Ca. 24 300		1.77	23½%	19 -030
	1418	Good Value with Bacon Ca. 24 300		2.69	27½%	11 -030
	1419	Whitehouse, Fresh Shelled Ca. 6 10		8.69	26%	79 -047

SHELL BEANS

	1421	Good Value with Cut Green Beans Ca. 24 300		2.69	23½%	18 -033

BROWN-RED BEANS

	1422	Brown Beauty Rambler Ca. 24 300		2.69	23½%	2/29 -030
	1423	B & M Baked Beans Ca. 24 16 oz.		4.69	19½%	39 -042
	1424	Deep Brown, Libby's Ca. 24 16 oz.		5.97	23½%	2/37 -029
	1425	Morton House Bake Beans Ca. 24 16 oz.		4.69	29%	21 -030
	1426	Allen Pinto Ca. 24 300		1.77	23½%	2/19 -031

NEW POTATOES

	1427	Hunt's Whole Ca. 46 300		8.69	23½%	15 -030
	1428	Del Monte R. G. Ca. 24 300		2.84	24½%	16 -032
	1429	Allen, 10-14 Count Ca. 24 300		1.69	29%	10 -031

GREEN BEANS and POTATOES

	1430	Allen, Cut Ca. 24 303		2.69	23½%	2/29 -031
	1431	Good Value Fix. Std. Ca. 24 303		8.69	24%	17 -031

PEAS & POTATOES

	1432	Allen Peas & Potatoes Ca. 24 303		1.99	29%	10 -030

GREEN BEANS

	1434	Allen Cut Ca. 48 1		8.49	19%	9 -042
	1437	Allen Cut Ca. 24 303		2.22	19½%	2/29 -031
	1438	Rainbow Ca. 24 303		2.19	27%	2/29 -031
	1439	Libby French Style Ca. 24 303		4.69	23%	25 -031
	1440	First Pick Fcy. 1,2,3 Sv. Cut Ca. 24 300		2.59	23½%	2/37 -031
	1442	Crest Top Whole Ca. 24 303		2.22	18½%	2/29 -031
◆	1443	Hyde Park Cut Ca. 6 10		3.61	24%	75 -047
WD	1445	Libby Cut Ca. 48 Buf.		8.69	19%	2/29 -033
N	1451	Good Value Cut Ca. 6 10		4.69	19%	83 -047

PORK and BEANS

	1429	IGA Ca. 48 300		3.97	29½%	10 -030
	1450	Bronco Weenee, Van Camp Ca. 24 12 oz.		4.89	20%	25 -030
	1451	Van Camp Bronco Weenee Ca. 24 8 oz.		3.79	18½%	19 -018
	1452	Van Camp Ca. 48 8 oz.		3.97	19%	2/19 -033
	1453	Brooks Ca. 48 300		3.82	29½%	19 -030
	1454	Campbell's Ca. 48		5.69	19%	2/37 -030
	1455	Van Camp's Ca. 48 300		5.43	17%	2/37 -030
	1457	Campbell's Ca. 24 28 oz.		4.69	23%	25 -004
	1458	Van Camp's Ca. 24 2		5.69	14½%	19 -033
WD	1473	Good Value Ca. 24 2½		3.49	19%	2/25 -004
	1470	Van Camp Ca. 24 2½		4.69	11%	25 -030
	1470	Van Camp's Ca. 6 10		8.85	21½%	83 -047

RED KIDNEY BEANS

	1461	Van Camp Ca. 48 8 oz.		5.69	23%	2/19 -030
	1464	Allen's Ca. 24 300		1.77	23½%	2/19 -042

The Leading Brand
For 70 Years

	1465	Joan of Arc Ca. 24 300		2.39	26½%	2/29 -031
	1466	Van Camp N.O. Style Ca. 24 300		2.79	23%	2/29 -031

MEXICAN STYLE BEANS

1481 Brown Beauty 2/25
Ca. 24 300 2.69 12½% -029

1482 Curtiss 2/23
Ca. 24 300 2.17 17½% -029

1483 Brown Beans in Chili Gravy, Ellis 12
Ca. 24 300 2.89 18% -030

WAX BEANS

1496 Allen Cut 18
Ca. 24 303 2.69 21½ -031

1498 Libby 4 Sv. Cut 25
Ca. 24 303 4.57 24% -031

BEETS

1501 IGA Diced 10
Ca. 24 303 1.89 20% -031

1502 Libby Diced 10
Ca. 48 buffet 3.89 20% -035

1503 Cut, Libby 2/25
Ca. 24 303 2.69 25% -031

Greenwood's
Home Style
Sweet Pickled Beets

1505 Sliced Pickled Pkg. Greenwoods 21
Ca. 24 12 oz. glo 3.69 25½% -040

1509 Whole, Del Monte 19
Ca. 12 303 glass 1.79 21½% -031

1510 Sliced Libby'd 18
Ca. 24 303 2.87 20% -031

1511 Del Monte Diced 17
Ca. 12 300 1.89 20% -031

1512 Libby Whole 16 Count 18
Ca. 24 303 2.87 24½% -031

1516 Deer, Diced 18
Ca. 24 303 1.89 20% -031

CARROTS and PEAS

1522 Libby 21
Ca. 24 303 4.13 19% -031

CARROTS

1529 Libby's Diced 17
Ca. 24 303 2.69 20% -031

1530 Deer Slice 19
Ca. 24 303 1.85 22½% -031

CREAM STYLE CORN

1532 Kounty Kist 19
Ca. 48 6 oz. 3.85 25½% -035

CORN
Summer Sweet Flavor
LIBBY'S

1533 Libby's C. S. Golden 12
Ca. 48 buf. 4.13 27½% -035

N 1534 Del Monte, C. S. Golden 12
Ca. 48 buf. 4.32 26½% -035

1536 Del Monte, Country Gentleman 13
Ca. 48 buffet 4.72 24½% -035

1537 IGA Golden 2/35
Ca. 24 303 2.39 17% -031

1539 Libby Country Gentleman 19
Ca. 24 303 2.71 18½% -031

1541 Del Monte Country Gent 19
Ca. 24 303 2.69 21½% -031

1542 IGA Fcy. White 18
Ca. 24 303 2.49 19½% -031

1543 Del Monte, Golden 18
Ca. 24 303 2.59 21½% -031

TO 1544 Kounty Kist Golden 18
Ca. 24 303 2.69 20% - 031

1546 Golden, Rainbow 2/35
Ca. 24 303 2.46 12% -031

1547 Libby's Golden 2/39
Ca. 24 303 2.85 20% -031

1548 Green Giant Golden 2/35
Ca. 24 303 2.59 21½% -031

1551 First Pick Golden 118
Ca. 6 10 5.58 22% -047

WHOLE GRAIN CORN

1554 Del Monte Golden 12
Ca. 48 buffet 4.69 20% -035

1555 Golden, Libby 2/35
Ca. 48 buffet 4.69 24½% -035

1557 Del Monte Golden 19
Ca. 24 12 oz. 2.69 19% -035

1558 IGA Golden Fancy 2/35
Ca. 24 303 2.27 22% -031

1559 Good Value Golden 2/29
Ca. 24 303 2.69 24½% -031

1560 Del Monte Golden, Brine Pack 19
Ca. 24 303 2.69 21½% -031

1561 Kounty Kist 15
Ca. 24 12 oz. 2.69 17% -035

N 1564 Niblets 17
Ca. 24 12 oz. 3.49 24½% -035

N 1565 Niblets 2/35
Ca. 48 7 oz. 4.78 21% -035

1567 Niblets Manicorn 19
Ca. 24 12 oz. 3.69 12½% -035

1568 Niblets Manicorn 2/35
Ca. 48 7 oz. 4.78 21% -035

1569 Golden Libby's 15
Ca. 24 303 2.79 18½% -031

1570 Libby Corn on Cob 29
Ca. 24 2½ 7.48 19½% -034

1572 First Pick W. K. Golden 105
Ca. 6 10 4.69 22½% -047

HOMINY

1573 Good Value, White 7
Ca. 48 11 oz. 2.15 20% -047

1576 Pinellas Golden Fancy 15
Ca. 24 300 1.85 22½% -035

1578 Van Camp 8
Ca. 48 300 2.49 21% -035

1584 White, Good Value 2/29
Ca. 24 2 1.79 20% -035

1589 Good Value White 14
Ca. 24 2½ 2.64 24% -034

KRAUT

1593 IGA 17
Ca. 24 2½ 2.69 25½% -034

1594 Libby's 13
Ca. 24 303 2.64 8% -031

1595 IGA Fancy 19
Ca. 48 300 4.69 15% -040

1596 Del Monte 2/27
Ca. 24 303 2.61 19% -031

1597 Curtis 19
Ca. 24 303 2.17 9½% -031

1598 Libby 21
Ca. 24 2½ 3.87 21% -034

1599 Franks 25
Ca. 6 10 3.69 21% -047

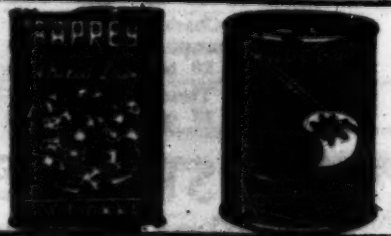
MIXED VEGETABLES

1602 Libby 11
Ca. 48 buffet 3.87 25% -035

1603 Larsen's Veg. all 19
Ca. 24 303 2.69 20% -031

1605 Libby Garden Veg. 18
Ca. 24 303 2.64 20½% -031

OKRA



1610 Treppey's Okra & Tomatoes 19
Ca. 24 303 2.89 27½% -031

1613 Treppey's Cut 15
Ca. 24 303 2.69 27½% -031

MUSHROOMS

The ONLY Canned Mushrooms Cooked in their Own Juice

1618 Royal, Buttons 33
24 2 oz. 4.85 23% -010

1619 Royal, Pieces and Stems 17
24 2 oz. 3.14 23% -010

1620 3 in 3 Crowns Mushrooms 35
Ca. 12 3 oz. 3.24 22½% -006

1622 Royal, Pieces and Stems 33
Ca. 24 4 oz. 5.78 23% -014

1624 Royal Trout Buttons 45
Ca. 24 4 oz. 7.78 24½% -014

MUSHROOM SAUCE

1626 Dawn Fresh 10
Ca. 24 1.69 20% -013

1627 North American Steak Sauce 25
& Sli. Mushrooms
Ca. 24 6 oz. 1.69 22½% -012

CHICKEN DINNERS

1834 Swanson Boned Turkey 35
Cs. 24 5 oz. 6.87 19% -016

1836 Swanson Boned Chicken 35
Cs. 24 5 oz. 6.87 19% -016

1837 Swanson Chicken Spread 21
Cs. 24 5 oz. 3.94 22% -014

1838 Swanson, Chicken Fricasse 47
Cs. 24 14 oz. 8.99 20% -030

KENNEDY'S Chicken and Noodles
"Guaranteed"

1839 Kennedy Noodles & Chicken 39
Cs. 12 16 oz. 3.65 22% -023

1840 Derby Chicken & Noodles 39
Cs. 12 16 oz. 3.69 21% -023

1841 Derby Chicken Wings and Dumplings 39
Cs. 12 16 oz. 3.69 25½% -030

1843 Dinner Time Chicken Pot Pie 69
Cs. 12 17 oz. 6.07 19½% -018

It's NEW
STAR-KIST
Tuna & Egg Noodle
DINNER

1844 Star Kist Egg Noodles & Tuna 29
Cs. 24 300 5.69 18½% -030

SALMON

✝R 1852 Pink 31
48 ½'s 11.76 21% -033

1856 Sam-o-lets 30
Cs. 48 ½'s 11.88 20% -033

✓ 1866 Gold Standard Chum 38
Cs. 48 16 oz. 16.11 11½% 060

SARDINES

1869 King Oscar in Olive Oil 30
Cs. 50 4 oz. 12.48 24% -021

1870 King Oscar Kipper Snacks 2/25
Cs. 50 4 oz. 5.04 19½% -030

1871 Crown, Norwegian, Olive Oil 20
50 4 oz. 8.08 19% -021

1873 Maine, Oil, Keyless 3/25
100 ¼ 6.92 17% -038

1879 Eatwell Oval Tomato 25
Cs. 24 1 4.74 21% -060

MACKEREL

✓R 1880 Rose Bowl Jack 23
Cs. 48 1 8.73 21% -060

TUNA FISH

1892 IGA Solid Pack Lt. Meat 35
Cs. 48 ½ 12.85 23% -030

1893 IGA Grated Lt. Meat 25
Cs. 48 ½ 10.69 16% -030

1895 Ocean Chief Lt. & Dark Meat 2/35
Cs. 48 6 7.02 16% -030

1897 Save-All Dark & Light 19
Cs. 48 ½'s 7.55 17% -030

1900 Starkist, Blue Label, Solid 39
Cs. 48 ½'s 15.60 16½% -030

1901 Star Kist Green Label, chunks 33
Cs. 48 ½ 14.14 10½% -030

For the
FINEST IN TUNA
See
Codes 1902 and 1903

1902 Albacore White Chicken of Sea 43
Cs. 48 ½'s 16.89 13% -030

1903 Chicken of Sea, Bite Size 32
Cs. 48 ½ 14.14 8% -030

CREAMED TUNA

CARNATION
CREAMED TUNA

1905 Carnation 48
Cs. 24 300 8.60 17% -030

CANNED MEATS

VEAL LOAF

1906 Armour's 31
Cs. 24 7 oz. 5.81 21½% -018

CORNED BEEF HASH

LIBBY'S CORNED BEEF HASH
You Can Taste the Extra
BEEF GOODNESS

1907 Libby's 29
Cs. 24 16 oz. 6.15 12% -030

1908 Armour's Star 28
Cs. 24 16 oz. 6.15 8½% -024

A QUICK Hearty Meal
Ellis
CORN BEEF
HASH

1909 Ellis 32
Cs. 24 300 6.81 18% -029

1910 Austex 29
Cs. 24 300 5.82 16½% -029

CORNED BEEF

1911 Armour's 49
Cs. 24 12 oz. 10.00 14½% -024

TO 1912 Libby's 45
Cs. 24 12 oz. 10.00 7½% -024

CHILI

TO 1914 Armour, with Beans 29
24 16 oz. 5.29 24% -034

1915 Plain, Armour's 35
Cs. 24 16 oz. 6.58 22½% -034

HYPOWER
Settle with 100% KANSAS CITY BEEF

1916 Hypower, Plain 37
24 300 7.15 18½% -039

1917 Hypower with Beans 28
24 300 5.40 20% -039

Ellis
CHILE
No Beans
No. 300 can

1919 Ellis Brick 39
Cs. 24 300 6.79 27½% -029

Ellis
CHILE
With Beans
No. 300 can

1920 Ellis, with Beans 27
Cs. 24 300 5.34 17½% -029

1922 Plain, Hormel 39
Cs. 24 300 7.58 19% -029

1923 With Beans, Hormel 33
Cs. 24 300 5.81 26½% -029

1925 Austex w/Beans 29
Cs. 24 300 5.60 19% -030

1926 Plain, Austex 37
Cs. 24 300 6.99 21% -029

2068 Friskies Meal
Bale 2 25 lb. 4.75 17½% -051 289

2069 Ken-L-Biscuit
Sack 25 lb. 3.87 11½% -026 335

2050 Guinea Meal
Ca. 50 lb. 4.69 16% -051 589

2051 Guinea
Bale 2 25 lb. 4.89 16½% -051 289

DOG CANDY

TO 2160 Dog Yummies, Hartz Mt.
Ca. 24 6 oz. 2.89 27½% -013 19

FISH FOOD

2165 French's
Ca. 12 1.62 15% -002 10

BIRD SEED

2111 Sing, Sing
Ca. 24 9 oz. 2.70 25% -018 15

2112 French's Song Food
Box 12 1.62 15% -002 10

2113 Gravel, French Bird
Ca. 12 24 oz. 1.62 15% -018 10

2114 French's Bird Seed
Ca. 24 10 oz. 3.78 25% -018 21

2116 Parakeet Seed
Ca. 12 12 1.90 31% -010 23

2117 French's Parakeet Cuttlebone
Ca. 12 ½ oz. 1.65 45% -002 35

2118 French's Parakeet Condition Food
Ca. 12 2½ oz. 2.49 42½% -006 35

2119 French Parakeet Gravel
Ca. 12 24 oz. 1.00

2120 Parakeet Treat Bells
Ca. 12 3 oz. 1.99 42½% -002 19

BABY FOOD TUNA

2158 Chicken of the Sea, Tuna
Ca. 24 ½'s 4.49 20% -007 24

JUICES FOR BABIES

2160 Bib, Orange
Ca. 48 4 oz. 3.69 15% -037 6/53

2161 Prune & Orange Juice, Bib 6/53

2162 Bib, Apricot and Orange Juice
Ca. 24 4 oz. 1.59 15% -014

2163 Gerber Orange Juice 5/25
Ca. 24 4 oz. 1.75 14% -010

DRY CEREAL

2179 Pablum Rice Cereal 23
Ca. 12 8 oz. 2.64 26% -008

2180 Pablum Barley Cereal 25
Ca. 12 8 oz. 2.64 26% -008

2181 Pablum Mixed Cereal 23
Ca. 24 8 oz. 4.69 26% -015

2182 Pablum Mixed Cereal 43
Ca. 12 16 oz. 3.89 24½% -017

2184 Pablum Oatmeal 23
Ca. 24 8 oz. 4.69 26% -015

2185 Cereal Wheat, Gerber's 16

2186 Oatmeal, Strained, Gerber's

2187 Barley Cereal, Gerber's

2188 Rice Cereal, Gerber's
Unit 12 1.65 12% -018

2189 Gerber's Quad Pack 16
Ca. 24 3.98 12% -020

2190 Gerber's Teething Biscuits 2/49
Ca. 12 8 oz. 2.10 28% -005

GERBER'S STRAINED

2203 Apple Sauce 3/25

2206 Plum and Tapioca

2207 Apricot Farina

2208 Apricot and Apple

2209 Pear and Pineapple

2210 Orange Pudding

2211 Green Beans

2213 Beets

2215 Carrots

2217 Sweet Potatoes

2220 Banana Pudding

2223 Custard Pudding

2224 Chocolate Pudding

2225 Vegetable Chicken Soup

2233 Vegetable and Liver Soup

2237 Mixed Vegetables

2239 Peaches

2243 Peas

2245 Pears

2249 Prunes

2251 Spinach

2253 Squash

2254 Vegetables and Bacon

2255 Vegetables and Lamb

✓ 2256 Vegetable-Beef Soup
Ca. 48 4½ oz. 3.72 7% -020

GERBER'S JUNIOR

2279 Apple Sauce 2/23

2281 Carrots

2282 Apricot and Apple

2283 Plum and Tapioca

2285 Squash

2287 Green Beans

2288 Peaches

2289 Pears and Pineapple

2291 Prunes

2293 Pears

2294 Vegetable and Chicken

2295 Vegetable and Beef

2296 Vegetable and Lamb

2297 Vegetable and Bacon

2298 Vegetable and Liver

2299 Mixed Vegetables

2300 Vanilla Custard

2301 Banana Pudding

2302 Choc. Pudding
Ca. 24 6½ oz. 2.29 19% -014

GERBER'S STRAINED MEATS

2307 Pork 21

2308 Egg Yolks

2309 Lamb

2310 Beef

2311 Veal

2312 Liver and Bacon
Ca. 24 4.49 12½% -011

GERBER'S CHOPPED MEATS

2313 Beef 21

2314 Veal

2315 Pork
Ca. 24 3½ oz. 4.49 12½% -011

CANNED SPECIALTIES

BEEF GRAVY

2360 Fr. Am. Beef Gravy 17
Unit 24 1 2.69 18% -021

2362 Wilson B. V. 35
Ca. 24 2¼ oz. 6.75 20% -010

CANNED MILK

2407 IGA 2/25
Ca. 48 tall 5.59 8% -053

2410 Pream 25
Ca. 24 4 oz. 5.59 21% -010

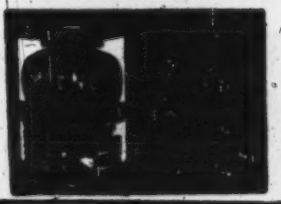
2412 Eagle Brand 25
Ca. 24 15 oz. 6.69 8% -028

2424 Carnation 4/27
Ca. 96 small 5.95 10% -046

2425 Carnation 2/27
Ca. 48 1 tall 5.95 10% -053

2428 Pet 4/27
Ca. 96 small 5.95 10% -046

2430 Pet 2/27
Ca. 48 tall 5.95 10% -053



2431 Milnot 5/29
Ca. 48 small 2.15 7½% -024

2432 Milnot 2/29
Ca. 48 tall 4.30 7½% -033

POWDERED MILK

2429 Sanalac With Tumbler 29
Ca. 6 25 oz. 4.45 16½% -024

2430 Sanalac 29
Ca. 24 19½ oz. 5.79 18% -035

2442 Pet 17
Ca. 24 6½ oz. 2.45 15½% -022

2443 Pet 29
Ca. 12 12 oz. 3.39 8% -019

2444 Starlac 5c Off Lable 30
Ca. 24 16 oz. 6.26 11½% -028

2445 Starlac 5c Off Lable 24
Ca. 24 3 qt. 4.69 23½% -018

CANNED and DEHYDRATED SOUP

CANNED — CONDENSED

2523 Swanson's Chicken Broth 14
Ca. 24 14½ oz. 2.78 18½% -030

2525 Brooks Veg. Soup 10
Ca. 48 1's 4.43 7½% -042

2526 Brooks Tomato 10
Ca. 48 1 4.43 7½% -042

2527 Campbells Asparagus 14
Unit 24 1 2.88 15½% -021

2529 Campbell's Bouillon 2/35
Unit 24 1 3.68 13½% -021

2530 Campbell's Pepper Pot 14
Unit 24 1 2.88 15½% -021

2531 Campbell's Beef 2/35
48 1 7.19 14½% -042

2533 Camp. Beef & Noodles 2/35
48 1 7.19 14½% -042

2534 Camp. Bean & Bacon 14
48 1 5.58 17% -042

2536 Campbell's Cream of Chicken 2/35
Ca. 48 1. 7.19 14½% -042

2537 Campbell's Chicken with Rice 2/35
Ca. 48 1 7.19 14½% -042

2539 Campbell's Chicken Noodle 2/35
Ca. 48 1 7.19 14½% -042

2541 Camp. Cream of Mushroom 2/35
Ca. 48 1 7.19 14½% -042

2542 Campbell's Onion 2/35
Ca. 48 1 7.19 29% -042

2543 Campbell's Green Pea 14
Unit 24 1 2.88 15½% -021

2544 Campbell's Chicken Gumbo 2/35
Ca. 48 1 7.19 14½% -021

2545 Campbell's Tomato 2/23
Ca. 48 1 4.78 13½% -042

2546 Campbell's Clam Chowder 2/35
Unit 24 1 3.68 13½% -021

2547 Campbell's Scotch Broth 2/35
Unit 24 1 3.68 13½% -021

2548 Campbell's Celery 14
Unit 24 1 2.88 15½% -021

2550 Campbell's Vegetable 2/25
Ca. 48 1 5.58 7% -042

2551 Campbell's Veg-Beef 2/35
48 1 7.19 14½% -042

2553 Campbell's Vegetarian 14
Ca. 48 1 5.58 7% -042

2556 Campbell's Consomme 2/35
Unit 24 1 3.68 13½% -021

BOUILLON CUBES

2565 Beef 10
Ctn. 24 5 pkgs. 1.48 38½% -002

DEHYDRATED SOUP

2618 Chicken Noodle Soup, Lipton 3/39
Ca. 32 3 pkg. 10.80 19½% -016

2620 Lipton Tomato Veg. 3/39
Ca. 48 5.69 19½% -008

2622 Lipton Onion 10c coupon pack 15
Ca. 24 3.69 16½% -004

BREAKFAST FOODS

HOT CEREALS

2707 Post Wheat Meal 20
Ca. 12 14 oz. 2.07 13½% -020

2709 Post Wheat Meal 30
Ca. 12 22 oz. 3.89 16½% -022

2714 Cream of Wheat, 5 Minutes 33
Ca. 18 28 oz. -036

2715 Cream of Wheat, Regular 33
Ca. 18 28 oz. -036

2716 Cream of Wheat, 5 Minutes 21
Ca. 24 14 oz. -028

2717 Cream of Wheat, Regular 21
Ca. 24 14 oz. -028

2720 Cream of Rice 34
Ca. 12 18 oz. 3.59 14% -019

2721 Malt-O-Meal 33
Ca. 18 24 oz. 5.10 14% -036

2722 Malt-O-Meal 21
Ca. 18 12 oz. 3.05 19½% -026

2727 Ralston Instant Cereal 31
Ca. 18 18 oz. 4.46 21% -021

TO 2729 Ralston Whl. Wht. Cereal 31
Ca. 18 24 oz. 4.46 21% -036

GENERAL FOODS

2732 Post Ten Asst. 35
Ca. 24 10 7.02 16½% -038

2734 Post Bran Flakes 24
Ca. 24 15 oz. 5.18 10% -032

2735 Post Bran Flakes 14
Ca. 24 8 oz. 3.06 9% -018

2737 Post Raisin Bran 19
Ca. 24 10 oz. 3.78 17½% -027

2738 Post Krinkles Patches Pack 15
Ca. 24 5½ oz. 3.30 8½% -013

2740 Post Grape Nuts 19
Ca. 24 10½ oz. 4.06 11% -018

2741 Grape-Nuts Flakes 22
Ca. 24 12 oz. 4.65 12% -028

2743 Grape-Nuts Flakes 15
Ca. 24 8 oz. 3.30 8½% -020

2744 Post Corn Fetti 23
Ca. 24 10 oz. 4.95 14% -035

2745 Post's Corn Toasties 15
Ca. 24 8 oz. 3.21 10½% -017

2746 Post's Corn Toasties 20
Ca. 24 12 oz. 4.34 9½% -028

2747 Corn Toasties 27
Ca. 24 18 oz. 5.56 14% -036

R 2748 Sugar Crisps 15
Ca. 24 6 oz. 3.30 11% -010

2749 Sugar Crisp 23
Ca. 24 10 oz. 4.95 10½% -020

GENERAL MILLS

2750 Betty Crocker, Asst. 35
Ca. 12 10 3.45 17½% -019

2751 Cheerios 17
Ca. 36 7 oz. 5.39 15% -032

2752 Cheerios 22
Ca. 24 10½ oz. 4.90 7½% -024

2753 Corn Kix 17
Ca. 24 7 oz. 3.45 15½% -018

2754 Sugar Jets, Plus 4-10 oz 25
Pkgs. Free & 28-1 oz. Samples
Ca. 24 10 oz. 4.95 29% -021

2755 Wheaties Auto Emblem 15
Ca. 36 8 oz. 4.95 8½% -027

2756 Kix Coupon Pack 25
Ca. 24 10½ oz. 4.90 18½% -024

2757 Wheaties Auto Emblem 21
Ca. 24 12 oz. 4.65 7½% -021

IGA

2759 IGA Breakfast Trays 30
12 10 oz. 3.60 16½% -016

2766 Wheat Puff, Tru-Vu 17
Ca. 24 8 oz. 3.20 19% -016

KELLOGG'S

2772 V-12 35
Ca. 12 3.58 16% -019

2773 Snack Pack 29
Ca. 12 6's 2.82 19% -009

2774 All Bran 17
Ca. 24 10 oz. 3.68 9½% -027

2776 All Bran 29
Ca. 12 17 oz. 3.87 17½% -016

2777 Corn Flakes, Coupon Pack 20
Ca. 24 12 oz. 4.35 9½% -026

2778 Sugar Frosted Flakes 23
Ca. 24 10 oz. 4.90 9½% -020

2779 Corn Flakes 16
Ca. 24 8 oz. 3.21 16½% -017

2781 Corn Soya Shreddies 17
Ca. 12 8 oz. 1.75 14% -010

2782 Krumbles 17
Ca. 12 9 oz. 1.72 15½% -010

2783 Corn Pops 17
Ca. 24 4½ oz. 3.32 18½% -027

2784 Corn Pops 25
Ca. 24 8 oz. 5.00 16½% -017

2785 Rice Krispies 15
Ca. 24 5½ oz. 3.32 8% -018

2786 Rice Krispies 25
Ca. 24 9½ oz. 5.54 8% -015

2787 Shredded Wheat 19
Ca. 24 12 oz. 3.88 15% -023

2788 Raisin Bran 29
Ca. 12 16 3.90 16½% -015

2789 40% Bran 23
Ca. 12 18 oz. 3.28 17½% -014

MOP STICKS

4810	Spring Type Bdle. 12	2.40	20%		25 -012

SPONGES

Makes All House Cleaning EASIER

4812	O-Cell-O Ctn. 12 No. 3C	3.78	46⅔%		59 -002
4813	Ivalon Asst Baby Platime Animal Shape Cs. 24	7.65	35⅓%		49 -008
4814	O-Cell-O Dish Mop Ctn. 12 No. 30	2.35	49⅓%		39 -003
4815	O-Cell-O, F.T., Colored Ctn. 12 No. 1C	1.09	52%		19 -001

Cleans walls, woodwork, windows, tiles, dozens of things! Out performs, outlasts any other sponge in the world!

4816	Asst. Large Ivalon Colored Cs. 24 E	5.46	38%		23 -005
4817	O-Cell-O, F.T., Colored Ctn. 12 No. 2C	1.91	52%		33 -002
4818	O-Cello Kitchen Kit Cs. 24 1-1C 3'x 1-2C 1-#30 Dish Mop 94c Value	9.89	42%		69 -006

COLGATE-PALMOLIVE

4819	Cashmere Boquet Cs. 144	10.51	12½%		3/25 -039
4820	Cashmere Bouquet Unit 72	5.34	12%		3/25 -020
4821	Cashmere Bouquet, Bth, F.T. Cs. 50	5.34	14½%		2/25 -019
4822	Cashmere Bouquet, Bath Cs. 100	10.51	16%		2/25 -036
4823	Palmolive Unit 72	5.34	12%		3/25 -018
4824	Palmolive, Regular Cs. 144	10.51	12½%		3/25 -036
4829	Palmolive, Bath Size Cs. 100	10.51	16%		2/25 -036
4830	Palmolive, Bath Size Unit 50	5.34	14½%		2/25 -018
4834	Vel Beauty Bar Cs. 72	14.55	19%		25 -016
4835	Super Suds, Blue Cs. 24	6.66	10½%		31 -033
4837	Super Suds Blue Coupon Pack Cs. 10	6.66	8⅓%		73 -036
4838	Vel Cs. 24	6.66	10½%		31 -029
4839	Vel Cs. 10 Giant	6.66	8⅓%		73 -029
4840	Fab, 10c Coupon Cs. 24	6.66	10½%		31 -034
4841	Fab, 20c Coupon Cs. 10	6.66	8⅓%		73 -036

LEVER BROS.

4860	Lux Liquid Detergent Cs. 24 12 oz.	8.07	8⅓%		37 -026
4861	Lux Liquid Detergent Cs. 12 22 oz.	7.14	13⅓%		69 -022
4863	Lifebouy Cs. 144	11.23	13%		3/27 -036
4864	Lifebuoy Unit 72	5.66	12½%		3/27 -018
4866	Lifebuoy, Bath, Improved Cs. 100	11.23	16⅔%		2/27 -036
4867	Lifebuoy Bath Cs. 50	5.66	16%		2/27 -018
4868	Lux Flakes Cs. 24	6.66	10½%		31 -025
4876	Lux Toilet Soap Cs. 144	10.51	12½%		3/25 -036
4878	Lux Toilet Soap Cs. 72	5.34	12%		3/25 -014
4880	Lux Toilet Soap, Bath Size Cs. 50	5.34	14½%		2/25 -033
4881	Lux, Bath Size Cs. 100	10.51	16%		2/25 -036
4885	Rinso Blue Cs. 24	6.66	10½%		31 -033
4892	Surf Giant 10c Off Label Cs. 12	5.59	9⅓%		61 -034
4893	Surf Cs. 24	6.66	10½%		31 -033
4894	Surf Cs. 12	6.66	8⅓%		61 -034
4896	Breeze, Dish Cloth Cs. 24	6.89	10½%		32 -033
4897	Breeze, Dish Towel Cs. 12	6.89	9%		63 -034
4904	Silver Dust, Face Cloth Cs. 24	6.89	10½%		32 -039

PROCTOR and GAMBLE

4907	Camay Unit 72	5.34	12½%		3/25 -018
4909	Camay Cs. 144	10.51	12½%		3/25 -036
4910	Dreft Cs. 10	6.66	8⅓%		73 -028
4911	Dreft Cs. 24	6.66	10½%		31 -028
4912	Tide Cs. 24	6.66	10½%		31 -033
4913	Tide Cs. 10	6.66	8⅓%		73 -036
4914	Camay, Bath Size Cs. 50	5.34	14½%		2/25 -018
4915	Camay, Bath Size Cs. 100	10.51	16%		2/25 -036
4916	Ivory Flakes Cs. 24 large	6.66	10½%		31 -025
4917	Tide Cs. 60	6.66	14½%		13 -056
4918	Ivory Flakes Cs. 10 Giant	6.66	8⅓%		73 -036
4921	Ivory Soap Cs. 100 large	12.18	16%		2/29 -068
4923	Ivory Soap Unit 50 Large	6.14	15⅓%		2/29 -033
4925	Ivory Soap Cs. 100 med.	7.29	12½%		3/25 -040
4926	Ivory Soap Unit 50 med.	3.69	11%		3/25 -020
4930	Ivory Soap Cs. 144 pers.	6.87	17%		4/23 -036
4931	Ivory Soap Unit 72 pers.	3.49	15⅓%		4/23 -019
4935	Ivory Snow Cs. 10	6.66	8⅓%		73 -036
4936	Ivory Snow Cs. 24 large	6.66	10½%		31 -028
4937	Joy Cs. 24	6.66	10½%		31 -033
4938	Joy Cs. 10	6.66	8⅓%		73 -033
4941	Lava Soap Cs. 100 large	12.61	18½%		2/31 -017
4942	Lava Unit 50 Large	6.37	17½%		2/31 -024
4945	Lava Soap Cs. 100 med.	8.15	20%		2/23 -034
4946	Lava Unit 50 med.	4.62	19%		2/23 -017
4948	Kirk Hard Water Castile Soap 100	7.81	19%		2/29 -047
4950	P & G Cs. 100 large	7.28	13⅓%		2/17 -064
4951	Oxydol Cs. 24 large	6.66	10½%		31 -043
4953	Giant Oxydol Cs. 10	6.66	8⅓%		73 -044
4958	Cheer Cs. 24	6.66	10½%		31 -033
4959	Cheer Cs. 10	6.66	8⅓%		73 -036
4962	Dus Cs. 24 large	6.66	10½%		31 -038
4963	Giant Dus Cs. 10	6.66	8⅓%		73 -044

STARCH — GLOSS

(For Corn Starch See Column 61

4969	Glosstex Liquid Cs. 6 ½ gal.	2.80	21%		59 -040
4970	Niagara, Cold, Laundry Cs. 24 12 oz.	3.85	20%		19 -021

FAULTLESS STARCH 12 OZ. SIZE

4971	Faultless, F.T. Cs. 12 36 oz.	3.85	13⅓%		37 -032
4972	Faultless, F.T. Cs. 36 12 oz.	3.85	14½%		2/25 -032
4973	Faultless, F.T. Cs. 72 6 oz.	3.85	17½%		2/13 -032
4974	Gloss Tex, Liquid Cs. 12 qt.	2.90	24%		32 -048
4975	Argo Gloss Cs. 24 12 oz.	2.19	26⅔%		2/25 -021

4976	Sta-Flo Liquid Cs. 12 qt.	2.24	19%		23 -040
4977	Sta-Flo Liquid Cs. 6 ½ gal.	2.07	18%		42 -040
4978	Perma, Liquid Cs. 12 pt.	5.69	31⅓%		69 -022
4979	Linit Cs. 24 12 oz.	2.64	21%		14 -021

4980 Cameo 12
Cs. 36 12 3.28 24% -040

MISCELLANEOUS

4982 Woodbury ½ Price Sale 33
Cs. 32 3 bars bath 2.40 11% -036

4985 Woodbury ½ Price Sale 25
Cs. 48 3's Reg. 2.70 18⅓% -048

4986 Satina Tablet 2/15
Unit 24 1.45 19% -002

4987 White King Powder 31
Cs. 24 large 6.65 11% -038

4988 Blue White Flakes 10
Cs. 48 No. 1 3.60 24⅓% -049

4990 White King Water Softener 25
Cs. 12 large 2.45 18% -025

4991 LaFrance Powder 10
Unit 24 1.30 25% -004

4992 Finish Detergent 49
Cs. 12 20 oz. 4.25 33⅓% -018

4994 20 Mule Team Borax 19
Cs. 24 16 oz. 3.55 22% -026

4995 Borazo 19
Cs. 24 8 oz. 3.40 25⅓% -015

4998 Raindrops 24
Cs. 24 24 oz. 4.80 16⅓% -041

4999 Melo 25
Cs. 12 22 oz. 2.40 20% -020

5000 Trend 47
Cs. 10 giant 3.95 16% -026

5002 Shina Dish 33
Cs. 24 6.75 14⅓% -031

5004 Calgon 39
Cs. 12 19 oz. 3.40 27⅓% -018

5005 Calgonite 45
Cs. 12 1⅓ lb. 3.70 31⅓% -021

5006 Trend Deals 2/33
Cs. 24 3.75 5⅓% -022

THE
APPROVED DETERGENT
for
ELECTRIC DISHWASHERS

5007 Electrasol, F.T. 39
Cs. 12 26 oz. 3.80 25% -044

BUBBLE BATH FOR THE ENTIRE FAMILY
SOFTENS THE WATER!
NO BATHTUB RING!

5008 Bubble, Bath and Water Softner, Joy Suds 29
Cs. 24 16 oz. 4.70 32% -028

5010 All 37
Cs. 20 24 oz. 6.86 7% -032

5011 All 249
Cs. 4 10 lb. 8.82 11% -045

5013 Sweetheart 3/25
Cs. 100 Reg. 7.45 10½% -036

5014 Sweetheart 2/25
Cs. 48 Bath 5.15 14% -018

✔ 5016 Dial Soap 2/27
Cs. 100 10.65 21% -036

✔ 5017 Dial Bath Soap 2/37
Cs. 72 10.65 18½% -022

Wrisley fine toilet soap

3 Cakes in Re-Use Plastic Bag
pine - apple blossom - lilac
castile - lanolin

Hard Milled • Delightfully Fragrant

5018 Wrisley Plastic Bag Assorted Bar Soap 59
Cs. 12 3 5.85 17% -023

SHORTENING—OILS

OLIVE OILS

5023 Pompeian 45
Cs. 12 8 oz. tins 3.85 28½% -008

5025 Pompeian 15
Cs. 24 2 oz. gls. 2.62 33% -009

5027 Pompeian 25
Cs. 24 4 oz. gls. 4.65 33⅓% -012

COOKING & SALAD OILS

5029 Mazola 37
Cs. 24 pt. gls. 7.70 13% -036

5030 Mazola 69
Cs. 12 qt. 6.85 17% -040

5032 Wesson Oil 35
Cs. 24 pt. 7.70 8% -036

5035 Wesson Oil 68
Cs. 12 qt. 6.85 16% -040

5036 Kraft 35
Cs. 12 pint 3.80 9⅓% -023

5038 Kraft 67
Cs 12 qt. 6.75 16% -040

5040 Peanut Oil, Hi-Hat 85
Cs. 12 qt. 8.24 19% -040

SHORTENING

5042 IGA Sno Creem 83
Cs. 12 3 lb. 9.29 6⅓% -044

5043 Bakerite 84
Cs. 12 3 lb. 9.26 7% -044

5046 Crisco 37
Cs. 36 1 lb. 11.26 14⅓% -044

5047 Crisco 95
Cs. 12 3 lb. 10.41 8⅓% -044

5048 Crisco 190
Cs. 6 6 lb. 10.41 8⅓% -044

5051 Spry 95
Cs. 12 3 lb. 10.41 8⅓% -044

✔R 5052 Advance 73
Cs. 16 3-lb. 11.15 4⅓% -052

N 5066 Mrs. Tucker's
1 Cs. 24 1-lb. Free
With 2 Cases Code 5069

5067 Mrs. Tucker 29
Cs. 48 1 lb. ctn. 12.80 10⅓% -052

5068 Mrs. Tucker 89
Cs. 16 3 lb. ctn. 12.35 13% -052

5069 Mrs. Tucker 90
Cs. 12 3 lb. tins 10.22 5⅓% -044

5070 Mrs. Tucker 235
Cs. 6 8 lb. pail 12.90 8⅓% -055

5074 Southern Queen 1325
Cs. 50 lb. drum 11.50 13% -056

SYRUP

CANE and MAPLE

5078 Log Cabin 28
Cs. 24 12 oz. 5.65 16% -038

5079 Log Cabin 55
Cs. 12 24 oz. 5.32 19⅓% -042

5081 Vermont Maid 29
Cs. 24 12 oz. 6.16 11⅓% -040

5082 Vermont Maid 55
Cs. 12 24 oz. 5.83 11⅓% -040

WAFFLE SYRUP

5084 IGA 23
Cs. 24 1⅓ lb. 4.29 20⅓% -054

5085 IGA (Decanter) 39
Cs. 12 32 oz. 4.69 14⅓% -047

5086 IGA 63
Cs. 6 5 lb. 3.11 17⅓% -040

5088 Karo 23
Cs. 24 1⅓ 4.85 16% -054

5101 Karo 67
12 5 lb. 6.63 17⅓% -070

CRYSTAL WHITE

5116 Karo 22
Cs. 24 1⅓ lb. 4.83 14⅓% -054

✔ 5118 IGA (Decanter) 39
Cs. 12 32 oz. 3.80 16⅓% -047

5128 Karo 84
Cs. 12 5 lb. 6.27 18% -070

[fol. 1088]

GOLDEN SYRUP

5149	Karo				22
	Cs. 24 1½ lb.	4.88	17½%		-054
5151	IGA (Decanter)				39
	Cs. 12 32 oz.	3.75	20%		-047
5161	Karo				61
	Cs. 12 5 lb.	6.00	17%		-070

MOLASSES & SORGHUM

5175	Brer Rabbit Blue				23
	Cs. 24 12 oz.	4.21	24%		-039
5176	Blue Label Brer Rabbit				61
	Cs. 12 5 lb.	6.00	17½%		-070

5186	Grandma Molasses				25
	Cs. 24 12 oz.	4.88	19%		-039
5187	Grandma Molasses				49
	Cs. 12 24 oz.	4.73	19½%		-037
5188	Blackstrap Molasses				30
	Cs. 12 24 oz.	2.95	18%		-037
5191	Gold Brer Rabbit				25
	Cs. 12 12 oz. gls.	2.98	20½%		-021
5193	Green Brer Rabbit				22
	Cs. 12 12 oz. gls.	2.10	20½%		-021

CANNING SUPPLIES

JARS

5200	Kerr Wide Mouth Pints				101
	Cs. 12 pints	.91	7%		-009
5201	Kerr Wide Mouth Qts.				115
	Cs. 12 qts.	1.06	7½%		-013
5202	Kerr Reg. Half Pints				86
	Cs. 12 ½ pints	.79	8%		-006
5203	Kerr Reg. Pints				89
	Cs. 12 pints	.82	7½%		-008
5206	Kerr Squat Jelly Glasses				63
	Cs. 12 ½ pint	.53	10%		-044
5207	Kerr Tall Jelly Glasses				65
	Cs. 12 ½ pint	.55	10%		-054

Ball DOME LIDS
"TOUCH TEST" SEAL LIDS and BANDS.

5208	Ball Dome Reg.				89
	Cs. 12 pints	.82	7½%		-009
5209	Ball Dome Reg.				100
	Cs. 12 qts	.93	7%		-012
5210	Ball Dome Freezer				101
	Cs. 12 16 oz.	.94	7½%		-009
5211	Ball Dome Freezer				115
	Cs. 12 22 oz.	1.06	7½%		-012

JAR CAPS

5229	Kerr Wide Mason				39
	Cs. 12 Wide	4.69	12½%		-009
5230	Kerr Mason				29
	Cs. 24	5.69	19½%		-015
5231	Kerr No. 63				29
	Cs. 12	2.89	19½%		-006
5232	Ball Dome				29
	Cs. 2 gross	5.69	19½%		-006
5234	Bernardin Std.				29
	Cs. 2 gross Std.	5.69	19½%		-051
5235	Bernardin				29
	Cs. 5 gross #63	5.69	19½%		-012

JAR LIDS

TO	5245	Kerr			2/25
		Cs. 5 gross	6.45	14%	-015
	5246	Kerr # 63			2/25
		Cs. 3 gross	3.87	14%	-006
	5248	Bernardin Std.			2/25
		Cs. 5 gross Std.	6.45	14%	-015
	5249	Bernardin			2/25
		Cs. 5 gross #63	6.45	14%	-012

JAR RINGS

5250	Paramont Red Lip				2/15
	Carton 24	1.34	25½%		-005

BOTTLE CAPS

5251	Crown				33
	Cs. 24 1 gross	5.82	26½%		-025

PECTINS

5309	Certo				25
	Cs. 12 8 oz.	2.51	16%		-013

5310	Pen Jel				2/25
	Ctn. 36 2½ oz.	3.80	22½%		-005
5316	Sure-Jell				2/25
	Cs. 48 2½ oz.,	4.67	22%		-008

PARAFFIN WAX

5350	Tex-Wax				20
	Cs. 20 1 lb.	3.23	19%		-025
5352	Sure Seal Home Canning Wax				20
	Cs. 20 16 oz.	3.20	20%		-023

PAPER PRODUCTS

CLEANING TISSUE

5411	Pocket Size Kleenex.				5
	Refund 65				
	Cs. 144 5c	4.75	34%		-019
5413	Kleenex.				13
	Cs. 72 200	8.54	9%		-042
5416	Kleenex.				19
	48 300 count	8.35	8½%		-040
5417	Asst. Colors, Rainbow, F.T.				21
	Cs. 48 250 Ct.	7.56	25%		-031
5418	Charmin Facial Tissue, F.T.				3/51
	Cs. 48 300	6.21	24%		-040
5420	Co-ets, F.T.				43, 2/85
	Cs. 24 80 ct	5.74	33%		-006
5421	Co-ets, F.T.				23, 2/45
	Cs. 24 40 ct	3.08	43%		-004
5422	Scotties				12
	Cs. 72 200 ct.	8.10	6%		-042
5423	Scotties				23
	Cs. 36 400 ct	7.70	7%		-042

SANITARY BELTS

X	5424	Modess, Pinless Custom				39
		Ctn. 24	6.24	33%		-002
	5425	Kotex, Wonderform				33
		Unit 24	5.73	27½%		-002
	5426	Delux, Kotex				50
		Unit 12	4.34	27½%		-002

SANITARY NAPKINS

5427	Super Modess				2/77
	Cs. 24 12	6.99	25%		-025
5428	Junior Modess				2/77
	Cs. 24 12	6.99	25%		-025
5430	Reg. Modess, F.T.				2/77
	Cs. 48 12's	13.98	24%		-029
5431	Modess, F.T.				149
	Cs. 12 48's	13.36	24%		-024
5432	Med's, F.T.				35
	Cs. 12 10's	3.23	23%		-005
5433	Kotex, Jr., F.T. Refund 94				2/77
	Cs. 24 12's	6.94	24%		-015
5434	Super Kotex, F.T. Refund 94				2/77
	Cs. 24 12's	6.94	24%		-015
5435	Kotex, Reg., F.T. Refund 188				2/77
	Cs. 48 12's	13.98	24%		-029
5436	Kotex, No 130, FT Refund 178				149
	Cs. 12 48's	13.36	24%		-028

TOILET TISSUE

5460	Charmin Blue 2 ply 850 ct.				2/25
	Cs. 48 rolls	4.45	25½%		-023
5461	Charmin Green 2 ply 850 ct.				2/25
	Cs. 48 rolls	4.45	25½%		-023
5462	Charmin Pink 2 ply 850 ct.				2/25
	Cs. 48 rolls	4.45	25½%		-023
5463	Charmin Yellow 2 ply 850 ct.				2/25
	Cs. 48 rolls	4.45	25½%		-023
5475	Delsey, F.T. White				11
	Cs. 100	10.31	6%		-050
5477	Delsey Asst. 50 blue and 50 Green				2/27
	Cs. 100 #4827	10.31	21%		-050
5480	IGA, Dawn				4/37
	Cs. 100 rolls	7.10	25%		-055

CHARMIN
TISSUE
SO VERY SOFT

5481	Charmin Tissue				3/25
	Cs. 100 rolls	7.10	25%		-055
5482	Softweave				2/25
	Cs. 100 rolls	10.37	17%		-061
5485	Scott Tissue				3/25
	100	7.10	15%		-055
5489	Scott				11
	Cs. 100 rolls	10.06	8½%		-071

[fol. 1089]

COFFEE

FLEMING'S Flavor-rich
Vacuum Packed in Tin!

IMPORTANT TO YOU:

Certified Brands will pay you a special allowance in cash on Fleming's "Flavor-Rich" Coffee as follows:

1/2c per pound on shipments of 30 to 99 cases.

1c per pound on shipments of 100 to 199 cases.

1 1/2c per pound on shipments of 200 cases or more.

In addition, you will receive special 30 day billing on any of these quantities. Simply mail your invoice to:

Certified Brands, Inc
513 Delaware
Kansas City 6, Missouri

They will promptly mail you their check along with your invoice. For your convenience, all Fleming's coffee in the above quantities will be billed on separate invoice.

6604	Regular Grind Cs. 24 1 lb.	23.52	9%	107 -034
6606	Drip Grind Cs. 24 1 lb.	23.52	9%	107 -034
6608	Pulverized Cs. 24 1 lb.	23.52	9%	107 -034
6610	Regular Cs. 12 2 lb.	23.28	9%	212 -034
6612	Drip Cs. 12 2 lb.	23.28	9%	212 -034

COFFEE & CHICORY

6622	Old Southern Cs. 24 16 oz.	19.80	9 1/2%	91 -027

WHOLE BEAN COFFEE

6624	Sunny Morn Cs. 24 1 lb.	23.28	6%	103 -027

CHASE & SANBORN

6627	Regular				119
6628	Drip Cs. 24 16 oz.	26.82	6 1/2%	-034

MAXWELL HOUSE

6652	Maxwell House, Reg.				119
6656	Maxwell House, Drip				
6658	Maxwell House, Pulverized Cs. 24 1 lb.	26.82	6%	-034

DECAFFINATED COFFEE

6670	Sanka Regular				133
6672	Sanka Drip Cs. 12 1 lb.	14.40	9 1/2%	-017

COFFEE SUBSTITUTES

6680	Postum Cereal Cs. 12 18 oz.	3.60	17%	31 -016
6683	Postum, Instant 24 4 oz.	7.32	13%	35 -010
6687	Postum, Instant 12 8 oz.	6.44	15%	63 -010

INSTANT COFFEE

6701	Borden 20c off Label Cs. 12 5 oz.	14.73	17 1/2%	169 -012
6703	Borden's Cs. 24 2 oz.	14.39	12 1/2%	68 -012
6704	Chase & Sanborn 10c Off Label Cs. 24 2 oz.	11.74	19 1/2%	71 -010
6705	Nescafe 10c Off Label Cs. 24 2 oz.	11.89	15%	68 -012
6706	Nescafe Cs. 16 6 oz.	27.34	7 1/2%	184 -018
6707	Chase & Sanborn 20c Off Label Cs. 12 4 oz.	11.38	17 1/2%	135 -013
6708	Maxwell House 25c Off Label Cs. 16 6 oz.	25.48	8 1/2%	199 -018
6709	Sanka Cs. 24 2 oz.	15.87	13 1/2%	75 -011
6710	Maxwell House Cs. 24 2 oz.	14.17	9%	85 -012
6711	Maxwell House Cs. 16 6 oz.	27.34	7 1/2%	184 -018

FILTERS

6712	Schilling Filter Paper Ctn. 12 100	1.35	30 1/2%	15 -001
6713	Schilling Filter Cloth Ctn. 12 4's	1.35	30 1/2%	15 -001

TEA

6716	Golden Wedding OP Cs. 24 4 oz.	5.95	27 1/2%	29 -010
6732	Tender Leaf Tea Balls Cs. 24 16 ct.	4.34	16%	21 -005
6733	Tender Leaf 10c Sale Cs. 12 1/8 lb.	5.82	11 1/2%	68 -007
6734	Tender Leaf 10c Sale Cs. 12 48 bags	4.54	19 1/2%	57 -004
6740	Lipton Green Tea Bags Cs. 24 16 ct.	4.09	20 1/2%	21 -004
6741	Lipton Tea Bags Cs. 12 100 ct.	10.63	18 1/2%	109 -012
6742	Lipton Tea Balls Unit 36 8 ct.	3.34	22 1/2%	12 -002
6744	Lipton Tea Balls Cs. 48 16 ct.	8.48	19 1/2%	22 -004
6745	Lipton's Tea Bags Cs. 24 48's	11.48	19%	59 -006
6747	Lipton Green Tea Cs. 24 1/4 lb.	5.70	13%	27 -006
6748	Lipton, Y. L. Unit 36 1 1/4 oz.	3.84	34 1/2%	13 -003
6749	Lipton, Y.L. Cs. 48 1/4 lb.	14.37	1%	30 -016
6751	Lipton, Y.L. Cs. 24 1/2 lb.	14.84	1%	59 -014
6753	Lipton, O. P. Tea Cs. 12 1 lb.	13.93	7%	125 -014

INSTANT TEA

6755	Tenderleaf Cs. 24 1 oz.	7.70	25%	43 -007

NOTIONS

SHOE LACES

6757	Men's Brown				5
6758	Black				
6762	White Shoe Laces Ctn. 24 27"	.65	45%	-001

STRAIGHT and SAFETY PINS

6763	Straight Unit 12 10c	.89	50%	10 -002
6764	Delong, Safety Unit 36 8's Asst.	1.80	50%	10 -020

O.N.T. ASSORTED COLOR THREAD

6770	Ass'd Color Mere. Box 5 doz.	1.69		5 -003

O.N.T. WHITE THREAD

6771	No. 8 100 yds.				2/9
6772	No. 30 125 Yds.				
6773	No. 40 125 Yds.				
6777	No. 50 125 Yds.				
6779	No. 60 125 Yds. Box 1 doz.	.43	20 1/2%	-001

O.N.T. BLACK THREAD

6782	No. 8 100 Yds.				2/9
6785	No. 30 125 Yds.				
6787	No. 40 125 Yds.				
6789	No. 50 125 Yds.				
6790	No. 60 125 Yds. Box 1 doz.	.43	20 1/2%	-001

HANDKERCHIEFS

6793	Men's Pocket Pal Unit 12	1.69	44%	15 -001

[fol. 1090]

8246 Pall Mall - AM & CC pkg. 2/49, ctn. 234
Ctn. 200 2.14 9% -001

8247 Kents Pkg. 20, Ctn. 200
Ctn. 200 2.68 11% -001

8248 L & M Filters pkg 2/51, Ctn. 252
Ctn. 200 2.30 10% -001

8249 King Size Philip Morris Pkg. 2/48, ctn. 243
Ctn. 200 2.19 9½% -001

8250 Phillip Morris - P&M 2/47, ctn. 229
Ctn. 200 2.12 8½% -001

NOW ORDER

KOOL 2 SIZES

KING SIZE

AND

REGULAR

8251 Kool, King Size Pkg. 2/49, ctn. 243
Ctn. 200 2.19 9½% -001

8252 Raleigh, Plain King Size - B&W 2/49, ctn. 234

8253 Raleigh Cork-Tip, King Size B&W 234
Ctn. 200 2.14 9% -001

8254 King Size, Chesterfield Pkg. 2/47, ctn. 234
Ctn. 200 2.14 9% -001

8255 Herbert Tareyton - AM Pkg. 2/49, ctn. 234
Ctn. 200 2.14 9% -001

8256 Kent's King Size Pkg. 20 Ctn. 200
Ctn. 200 2.68 11% -001

8257 Wing's King Size - B&W Pkg. 2/41, ctn. 203
Ctn. 200 R 1.88 8½% -001

8258 Winston King Size Pkg. 2/51 Ctn. 252
Ctn. 200 2.30 9½% -001

8259 Viceroy, B&W Pkg. 2/51, ctn. 252
Ctn. 200 2.30 9% -001

8262 L & M King Size Pkg 2/51 Ctn 252
Ctn. 200 2.30 8½% -001

LESS NICOTINE

SUN-RIPENED RICHNESS

in

SANO

Cigarettes

8263 Sano Pkg. 20, Ctn. 200
Ctn, 200 2.68 10% -001

CIGARETTE PAPERS

8289 OCB, 150 Ct., R.J.R. 5
Ctn. 24 5c .87 28½% -001

8290 Riz La Croix, Am. Tob. 5
Ctn. 24 5c .87 28½% -001

5c SMOKING

8323 Bull Durham, Am. Tob. 6

8329 Duke's Mixture, L. & M.
Ctn. 24 5c 1.11 22½% -002

10c SMOKING

8341 Advertiser, R. J. R. 10
Ctn. 12 10c .99 17½% -002

8343 Bugler, B & W 10
Ctn 12 10c 1.11 7½% -002

8344 Geo Washington, R.J.R. 10
Ctn 12 10c .99 17½% -002

8347 Country Gentleman, L&M 10
Ctn 12 10c 1.11 7½% -002

8353 Granger, R.C. L&M 10
Ctn 12 10c 1.11 7½% -002

PIPE CLEANERS

8360 Dill 8
Cs. 20 .72 28% -002

MISC. SMOKING

8373 Half & Half, Am. Tob. 14
Ctn. 12 Tins 1.54 8½% -003

8375 Prince Albert, R.J.R. 14
Ctn. 12 Tins 1.54 8½% -003

8376 Prince Albert 115
Unit 1 lb. can 1.85 10% -001

8378 Bond Street 16
Ctn. 12 Tins 1.74 9½% -003

8379 Sir Walter Raleigh, B&W. 16
Ctn. 12 Tins 1.74 9½% -003

8381 Kentucky Club 16
Ctn. 12 Tins 1.74 9½% -003

8385 Velvet, L&M. 14
Ctn. 12 Tins 1.54 8½% -003

8386 Velvet, L&M. 115
Unit 1 lb. 1.85 8½% -001

8387 Granger Rough Cut, L&M. 108
Unit 1 lb. .99 8% -001

TWIST

8390 Cotton Bowl Am. Tob. 15
Ctn. 36 10c 4.91 12% -005

8393 Granger, L&M. 16
Drum 12 1.72 11% -001

8395 Picnic L. & M. 16
Drum 12 1.72 11% -001

8397 Mickey, R.J.R. 16
Drum 12 1.69 14½% -001

SCRAP CHEWING

8401 Beechnut, P. L. Co. 2/29
Ctn. 12 15c 1.54 11½% -002

8405 Mail Pouch, M. P. Co. 2/29
Ctn. 12 14c 1.55 11½% -005

PLUG CHEWING

8415 Brown Mule, R.J.R. (Big Cut) 17
Ctn. 1¼ lb. 1.48 14½% -002

BULL OF THE WOODS CHEWING TOBACCO "HE'S THE BOSS"

8419 Bull of The Woods Tob. 15
Cs. 15 15c 1.94 13½% -001

8420 Cash Value 2/29
Ctn. 12 15c 1.54 11½% -002

8423 Days Work 15
Ctn. 1¼ lb. 1.89 15% -002

8426 Horse Shoe, L&M. 15
Ctn. 12 10c 1.89 11½% -001

8436 Spark Plug, L&M. 15
Ctn. 8 12c .77 19½% -001

8439 Star, L&M. 15
Ctn. 12 10c 1.89 11½% -001

8443 Tinsley Thick, L&M. 15
Ctn. 12 15c 1.89 12½% -002

8449 Top Thick R. J. R. 15
Ctn. 7/8 lb. .99 17½% -001

8451 Union Standard, L&M. 15
Ctn. 16 10c 1.89 11½% -001

8453 WNT Thick, L&M. 15
Ctn. 12 15c 1.89 12½% -002

SNUFF

8457 Garrett 8
Ctn. 24 5c .99 17½% -002

8459 Garrett 2/21
Ctn. 12 10c 1.13 13% -002

8461 Garrett Tumblers 49
Ctn. 12 6 oz. 5.81 9½% -011

8465 Garrett Bottles 49
Ctn. 12 6 oz. 5.81 9½% -011

8473 Honest 2/21
Ctn. 12 10c 1.13 13% -001

8475 Honest Tumblers 49
Ctn. 12 6 oz. 5.81 9½% -011

8485 Garrett Sweet 2/21
Ctn. 12 10c 1.13 13% -002

8487 Garrett Sweet Tumblers 49
Ctn. 12 6 oz. 5.81 9½% -011

SUGAR

8512 Pure Cane 1045
Bag 100 lbs. R. 9.23 11½% -101

8516 Imperial Pure Cane 103
Bale 6 10 lb. 5.68 8% -062

8518 Imperial Pure Cane 52
Bale 12 5 lb. R. 5.74 8% -062

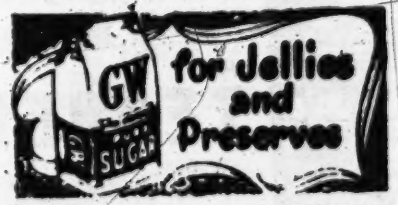
8520 Imperial Pure Cane 25
Cs. 30 2 lb. 6.68 19½% -063

8521 C & H 103
Cs. 6 10 lb. 5.68 8% -062

8522 C & H 52
Cs. 12 5 lb. 5.74 8% -062

8523 C & H 25
Cs. 30 2 lb. 6.68 19½% -063

8524 Cubiet 19
Cs. 24 1 lb. 3.56 22% -027



for Jellies and Preserves

8525 Beet 100
Bale 6 10 lb. 5.35 7½ -062

8526 Beet 51
Bale 12 5 lb. 5.61 6½% -062

BROWN SUGAR

✚	8532	Imperial Brown, Medium Cs. 24 1 lb. pkg. 2.75		8%	2/25 -027
✚	8534	C & H Cs. 24 1 lb. pkg. 2.75		8%	2/25 -027

POWDERED SUGAR

	8540	Sugar & Cinnamon, Schilling Cs. 24 5 oz. gls. 2.69		26%	17 -011
✚	8542	Imperial Powdered Cs. 24 1 lb. pkg. 2.79		13½%	2/27 -027
	8544	C & H Cs. 24 1 lb. pkg. 2.79		13½%	2/27 -027

SACCHARINE

	8575	Saccharine 24 10c	1.32	61%	10 -001

SALT

	8602	IGA Iodized Cs. 24 26 oz.	2.69	16%	10 -045
	8604	IGA, Plain Cs. 24 26 oz.	2.69	16%	10 -045
	8614	Morton's Minature Cs. 24 6's	2.36	9½%	2/21 -008
	8615	Morton's Iodized Cs. 24 26 oz.	2.34	6½%	10 -045
	8619	Morton's Free Running Cs. 24 26 oz.	2.34	6½%	10 -045
	8635	Pickling Cs. 6 10 lb.	1.89	18½%	39 -062
	8640	Table, Cs. 15 4 lb. bag	1.79	20½%	15 -060
	8643	Table Cs. 6 10-lb. bag	1.89	17½%	31 -062
	8647	Table, Sack 25 lb.	.44	17%	53 -036
TO	8652	Morton's Water Softener Sack 50 lb.	.76	30%	98 -051
	8654	Ice Cream Cs. 6 10	1.53	17½%	31 -062
	8657	Ice Cream Cs. 15 4 lb.	1.79	20½%	15 -062
	8662	Sulphur Stock 50 lb. blocks	.81	14½%	96 -050
	8664	Blocks, White 50 lb. each	.67	15½%	79 -050

MEAT SEASONING

MAKES ANY MEAT

TENDER

as Prime Cuts

	8708	So-Ten Meat Tenderiser, Unseasoned Cs. 12 2¼ oz.	2.31	33½%	29 -015
	8709	Seasoned Meat Tenderizer, Adolph's Cs. 24 4 oz.	3.29	30%	49 -015
	8710	Non-Seasoned Meat Tenderizer, Adolph's Cs. 24 4 oz.	3.29	30%	49 -015
	8721	Morton Tender Quick Cs. 12 2 lb.	6.25	31½%	69 -026
	8722	Morton Sugar Cure with Smoke Cs. 12 2 lb.	3.69	28%	43 -026
	8723	Morton Sugar Cure w/Smoke Cs. 6 7½ lb.	5.34	25%	119 -050

SUPPLIES

IGA PRINTED BAGS

TO	[illegible]	Bdles. 500 4 lb.	1.64	-008
	[illegible]	Bdles. 500 6 lb.	1.86	-012
	[illegible]	Bdles. 500 8 lb.	1.88	-015
	[illegible]	Bdle. 500 10 lb.	1.67	-018
	[illegible]	Bdle. 500 12 lb.	1.87	-020
	[illegible]	Bale 1000 16 lb.	4.92	-060
TO	9010	Bale 1000 20 lb.	5.28	-060
TO	9012	Bale 1000 25 lb.	5.78	-078
TO	9016	Bdle. 500 1/6 Bdle. 60 lb.	6.39	-068

BAGS — KRAFT

9059	Kraft Plain (Bale 20 Bdls.) Bdle. 500 ½ lb.	.39	-003
9061	Kraft Plain (Bale 16 Bdls.) Bdle. 500 1 lb.	.48	-005
9063	Kraft Plain (Bale 12 Bdls.) Bdl. 500 2 lb.	.59	-006
9065	Kraft Plain (Bale 10 Bdls.) Bdl. 500 3 lb.	.75	-008
9067	Kraft Plain (Bale 8 Bdls.) Bdl. 500 4 lb.	.95	-008
9071	Kraft Plain (Bale 6 Bdls.) Bdl. 500 6 lb.	1.17	-012
9073	Kraft Plain (Bale 4 Bdls.) Bdl. 500 8 lb.	1.35	-015
9075	Kraft Plain (Bale 4 Bdls.) Bdl. 500 10 lb.	1.49	-012
9077	Kraft Plain (Bale 4 Bdls.) Bdl. 500 12 lb.	1.69	-020
9081	Kraft Plain (Bale 2 Bdls.) Bale 1000 16 lb.	4.82	-068
9084	Kr[illegible] Plain (Bale 2 Bdls.) Bale 1000 20 lb.	4.86	-060
9086	Kraft Plain (Bale 2 Bdls.) Bale 1000 25 lb.	5.38	-078
9091	Kraft Cash & Carry 60 lb. 1/6 bbl. Bdl. 500	5.62	-068

CELLOPHANE BAGS

9102	Satchel Bottom 200 ½ lb.	1.10	-001
9106	Satchel Bottom Box 200, 3 lb.	2.09	-001
9108	Satchel Bottom Box 200 2 lb.	2.10	-001
9111	Satchel Bottom Ctn. 200 1 lb.	1.35	-001

SCOTCH CELLOPHANE TAPE

9113	M 2 Scotch Tape Dsnis Unit 1	22.68	46½%-	29 -015
9114	Heavy Duty Scotch Dispenser 1 only	2.89		-007
9115	Cellulose Scotch 216 ft. Roll ½" 2 rolls	1.94		-001
9116	Scotchlite Red Bumper Tapes Cs. 12 39c #8-25	2.35	53%	39 -002
9118	½x800 inches Unit 12 #175	3.76	47%	59 -002
9119	Metal Hand Dispenser, F.T. Ctn. 12 18c #134 ½"x100"	1.86	45%	15 -002
9120	Metal Hand Dispenser ½x800 Ctn. 12 #167	2.89	45%	39 -004
9121	Metal Hand Dispenser, F.T. Ctn. 12 25c, #144 (½"x200")	1.82	46%	25 -002
9122	Metal Hand Dispenser, #131 (½x60) Ctn. 36 10c	1.94	46%	10 -002
9123	#197 Plastic Tape Ctn. 12 39c	2.40	46½%	29 -001

FLOUR

For Cake Flour See Columns 38-39

IGA

9336 IGA Self Rising 265
Sx. 25 lb. 1.75 14½% -025

9337 IGA Self Rising 89
Bale 5 10 lb. 3.79 16½% -053

9338 IGA Self Rising 47
Bale 10 5 lb. 3.85 18% -053

9339 IGA Self Rising 25
Ck. 10 2 lb. 1.33 17% -021

9341 IGA Top Quality 399
50 lb. Cloth 3.36 16% -050

9342 IGA Top Quality 199
25 lb. Cloth 1.73 13% -025

9343 IGA Top Quality 97
5 10 lb. Paper 3.88 15% -053

9344 IGA Top Quality 45
10 5 lb. Paper 3.78 16% -053

RED STAR FLOUR

9346 Red Star 299
Sack 25 lb. 1.72 14½% -025

9347 Red Star 95
Bale 5 10 lb. 4.55 8½% -053

9348 Red Star 49
Bale 10 5 lb. 4.55 7½% -053

9350 Red Star 399
Sack 50 lb. 3.34 13% -050

GOLD MEDAL

9352 Gold Medal 197
Sx. 25 lb. 1.77 10% -020

9353 Gold Medal 97
Ck. 5 10 lb. 4.59 7½% -055

9356 Gold Medal 50
Ck. 10 5 lb. 4.79 6% -055

9357 Gold Medal 25
Bale 25 2 lb. 5.26 14½% -054

9360 Gold Medal 399
Sx. 50 lb. 3.44 12½% -051

PILLSBURY'S

9362 Pillsbury 197
Sack 25 lb. 1.79 9% -025

9363 Pillsbury 97
Bale 5 10 lb. 4.53 6½% -053

9364 Pillsbury 50
Bale 10 5 lb. 4.73 5½% -053

9365 Pillsbury 25
12 2 lb. paper 2.54 15% -026

9366 Pillsbury 399
Sx. 50 lb. 3.49 12½% -051

9368 Whole Wheat, Graham 59
Ck. 5 5 lb. 2.54 14% -026

9369 Pillsbury Rye Flour 57
Ck. 5 5 lb. 2.13 25% -027

GOLD MEDAL SELF RISING

9372 Gold Medal Self Rising Flour 53
Ck. 10 5 4.77 10% -055

9373 Gold Medal Self Rising Flour 103
Ck. 5 10 4.57 11% -055

MEAL

9384 Quaker Yellow 15
Ck. 24 1½ lb. 3.39 11% -044

9385 Yellow Quaker 27
Ck. 12 2½ lb. 2.89 23% -030

9386 Quaker White 15
Ck. 24 1½ lb. 3.49 21½% -044

9387 Quaker, White 29
Ck. 12 2½ lb. 2.79 22½% -030

GOLDA'S CORN MEAL
STONE GROUND

9390 White, Stone Ground, Golda's 29
Ck. 24 2 lb. ctn. 7.25 21½% -026

9391 Yellow Stone Ground, Golda's 29
Ck. 24 2 lb. ctn. 7.25 21½% -026

9394 Aunt Jemima, White 43
Ck. 10 5 lb. 3.65 14½% -051

9395 Aunt Jemima, Yellow 37
Ck. 10 5 lb. 3.27 9% -051

9396 Aunt Jemima, White 83
Ck. 5 10 lb. 3.62 17½% -051

9398 Shawnee's Best, Self Rising 19
Ck. 10 2 lb. 1.69 19% -051

9401 Shawnee Best, Self Rising 41
Bale 10 5 lb. 3.69 17% -051

9402 Shawnee Best, White 79
Bale 5 10 lb. 3.35 17½% -051

9403 H & H Yellow, Stone Ground 25
Ck. 24 2 lb. 4.45 25% -026

STORE PROMOTIONS

TOASTERS

9464 G. E. -007
I Unit 14.95

9465 Westinghouse 2350
Unit 1 15.98 32% -007

9466 Automatic Toast Master 2495
1 Unit 17.98 27½% -007

9467 Westinghouse Roaster Cab. 1995
1 R C 611 13.97 -025

ROASTERS

9469 Westinghouse Electric 4495
1 unit RO 91 25.49 43½% -046

FRYRITE

9470 Dulane Deluxe Model F4B
1 unit 18.97 -011

AIR CONDITIONERS

9471 Admiral #T8C7
1 Unit 185.00

9473 Admiral
1 unit 1 ton 294.99

SEWING MACHINE

9475 Modernage Portable Sewing with Attachment
1 Unit 37.50 -043

JUGS

9482 Hot Drink Thermo 189
Ck. 6 6.99 30½% -015

IRONS

9486 Westinghouse Steam 1375
I unit 13.50 -005

9487 General Electric F 50 Steam
1 Unit 12.99 -005

MIXERS

9489 G. E. Mixetter
I Unit 18.15 -005

TO 9490 Hamilton-Beach Mixerettes 1350
1 unit 18.96 28½% -005

TO 9491 Sunbeam with Juicers, F.T. 4695
1 unit 39.77 -010

9492 Hamilton Beach 3750
1 unit 26.95 -010

9493 Sunbeam Mixmaster Without Juicers F.T. 4350
1 unit 39.73 -010

9494 Knapp-Monarch Liquidmers F.T. 2983
Unit 1 16.50 51½% -010

ELECTRIC FRY PANS & LIDS

9496 Sunbeam Fry Pan
I Unit 16.71 -005

TO 9497 Sunbeam Lid
1 Unit 2.25 -001

T-V SET & APPLIANCES

9498 21" Console Admiral #2216
1 unit 285.57 -110

9501 Sise 1078 Halicrafter 21"
1 unit 198.47 -080

9506 H764T17 Westinghouse V159992
1 unit 174.97 -080

COFFEE MAKERS

9511 G. E. Percolators
1 Unit 19.57 -005

9512 Universal Coffeematics 2995
#4410
1 Unit 19.98 36½% -003

9513 Sunbeam Coffee Master F.T. 3750
1 unit 25.95 -003

9514 Duncan Hines Jet-O-Matic 2450
1 unit 19.99 20% -005

SALES SERVICE PLAN

DROP SHIPMENT COST SCHEDULE

ALL DROP SHIPMENTS

Will be invoiced to you at manufacturer's invoice cost to us with nothing added.

Drop shipments save you money if they do not force you to overload.

Drop shipments are included in your total purchases each 4-week period which gives you still lower percent cost on all your grocery department purchases.

Prices printed herein are for your information and were accurate on date of publication and are of course subject to change without notice. Terms: Cash with order F. O. B. warehouse. Suggested resale prices shown are from actual price survey of major competitive stores. Whenever selling prices appear in any material furnished by us it must be remembered that such prices are merely suggested.

MARKET CHANGES

LT Luxury Tax
FT Fair Trades Items
✓R Decline suggested retail
N Denotes new items added
✓ Denotes decline cost only
▲ Denotes advance cost only
TO Denotes temporarily out
▲R Advance suggested retail
All suggested resale prices are from actual weekly survey.

Items Discontinued

588	4580	5244	6726
1858	4581	5247	6907
3104	4842	5541	8130
4036	5012	5628	
4206	5304	5832	

INDEX	Code No.
A and B	
Alum	4580
Ammonia	3529
Apple Butter	210
Apples, Canned	986
Apples, Dried	3021
Apricots, Canned	1025
Apricots, Dried	3003
Asparagus, Canned	1436
Baby Food	3225
Bags, Cello	9108
Bags, Paper	9075
Baking Powder	3922
Barley	3925
Beans, Canned	1439
Beets, Canned	1515
Beans, Dried	7616
Berries	1002
Beverages	670
Bird Seed	2111
Bleaches	4709
Bluing	4720
Bouillon Cubes	1812
Brooms	3606
Brushes, Scrub	3605
C	
Cake Flour	3130
Cake Frosting	4102
Can Opener	3723
Candy	6324
Canned Fruits	1184
Canned Soup	3539
Canning Supplies	3330
Canned Vegetables	1500
Carrots, Canned	1537
Cat Food	3010
Catsup	80
Cellophane Supplies	9105
Cereals Ready to Serve	3777
Cereals, Hot	3716
Certo	3309
Cleaning Cloth	3605
Cherries, Maraschino	38
Cherries, R'yal Ann	1030
Cherries, R.S.P.	1037
Chili Con Carne	1918
Chili Sauce	75
Chinese Foods	1797
Chocolate	4316
Cigarettes	8341
Cigars	8210
Cleansers	4707
Cleansing Tissue	8416
Clothes Lines	4799
Clothespins	4805
Cocoa	4340
Cocoanut	4373-9636
Coffee	6644
Cookies	3478
Cooking Oils	5030
Corn, Canned	1500
Corn Flakes	3745
Corn Meal	3987
Corn Starch	3965
Cough Drops	6303
Crackerjack	6355
Crackers	3506
Cups, Paper	8975
Cranberries, Canned	983
D and E	
Dates, Dried	3039
Deodorizer	3787
Dessert Powder	4111
Dietetic Foods	1147
Dog Food	3016
Dried Fruits	3113
Drugs	6841
Egg Cartons, etc.	9143
Egg & Food Color	4499
Envelopes	5726
Erasers	5751
Extracts	4447
F and G	
Figs, Canned	1160
Figs, Dried	3009
Fish, Canned	1573
Floor Wax	3676
Flour, Family	3926
Fly Spray	7459
Fly Swatters	7807
Food Coloring	4479
Food Containers	9173
French Dressing	153
Fruit Cocktail	1122
Fruit Jars	8306
Fruit Jar Fittings	8343
Fruit Jar Rings	8253
Fruit Juices	877
Fruit Pectin	8510
Fudge Mix	4165
Gelatin	4021
Glace Fruits	3009
Gloves and Mittens	6810
Grapefruit, Canned	1164
Grapefruit Juice	882
Green Beans, Can'd	1438
Ground Spices	4886
Gum	6400
H	
Hominy, Canned	1580
Honey	206
Household Oil	3612
I and J	
Ice Cream Mix	4217
Ice Cream Toppings	786
Insect Spray	7480
Jams	245
Jellies	220
Jello	4068
Jelly Glasses	8391
L	
Lamp Goods	7870
Ldry. Supplies	4863
Light Bulbs	7870
Lima Beans, Can'd	1450
Lye	3692
M	
Macaroni Products	3228
Mackerel, Canned	1589
Mustard Greens	1738
Mustard, Prepared	98
Malt	3977
Malted Milk	711
Marmalade	300
Marshmallows	6951
Matches	5635
Mayonnaise	180
Meat Sauces	57
Meats, Canned	1887
Milk, Canned	2430
Mincemeat	3070
Mix., Veg., Canned	1804
Mixes	
Biscuit	3951
Hot Roll	3964
Cornbread	3971
Muffin	3969
Pie Crust	3978
Waffle	3970
Molasses	5187
Mops	3670
Mouse Traps	8944
Mucilage	5496
Mushrooms, Canned	1619
N	
Nuts, Shelled	7980
Note Books	8028
Noodles	3361
Napkins, Paper	8516
O	
Oats, Packaged	3825
Olive Oil	3037
Olives, Plain	402
Olives, Ripe	492
Orange Juice	889
Ovaltine	772
Oysters, Canned	1833
Pancake Flour	3171
PAPER—	
Towels	8804
Food Container	9170
Napkins	8515
Plates	8832
Cleaning Tissue	8415
Toilet Tissue	8486
Wax	8551
Wrapping	9236
Parowax	5350
Peaches, Canned	1218
Peaches, Dried	3007
Peanut Butter	360
Pears, Canned	1263
Peas, Canned	1646
Pectin	8310
Pencils	8787
Pickles	815
Pigs Feet	1926
Pimiento	1609
Pineapple, Canned	1284
Pineapple Juice	894
Plums, Canned	1389
POLISH—	
Floor & Furn.	3671
Shoe	3819
Silver	3796
Popcorn	7713-9795
Pork and Beans	1468
Postum	6823
Potatoes	1439
Preserves	227
Prune Juice	989
Prunes, Dried	3118
Pudding	4127
Pumpkin, Canned	1726
R and S	
Raisins	3183
Razor Blades	7988
Red & Kid. Beans	1485
Relish	253
Rice	7976
Ry-Krisp	3470
Saccharin	3975
Salad Dressing	116
Salmon, Canned	1886
Sal Soda	4908
SALT—	
Block	3984
Package	3613
Socks	8833
Sandwich Spread	127
Sanitary Napkins	5434
Sardines, Canned	1676
Sauces, Meats	55
Sauerkraut, Canned	1506
School Supplies	8630
Scouring Pads	3720
Scouring Powder	4707
Shaving Soap	7343
Shortenings	3947
Shrimp, Canned	1881
Silverware	9820
Snuff	8478
Soap, Laundry & Supplies	4912
Soap, Toilet	4871
Soda, Baking	3909
Soups, Canned	3541
Soup Mix	3621
Spaghetti	3281
Spaghetti, Canned	1781
Spices, Ground	4860
Spices, Whole	4868
Spinach, Canned	1708
Sponges	4816
Starch, Gloss	4975
Steel Wool	3781
Store Equipment	9261
Store Supplies	9139
SUGAR—	
Brown	8532
Granulated	8516
Powdered	8543
Sweep. Compound	3686
Swt. Potatoes, Can.	1717
Syrup	5130
Table Ware	9323
Tablets, Ink	5694
Tablets, Pencil	5691
Tape, Cello	9119
Tea	6740
Thread	6762
Tobacco, Smoking	8376
Tobacco, Chewing	8451
Tomatoes, Canned	1778
Tomato Juice	934
Tomato Paste	1792
Tuna Fish, Canned	1896
Toothpicks	5643
Turnip Greens	1741
Twine	8890
V and W	
Vinegar, Bottled	610
Yeast	3967

[fol. 1094]

DEFENDANT'S EXHIBIT 10

LOUIE J. SPEED FOOD MARKETS, Oklahoma City

715 N.W. 36th
1455 Westwood
1218 No. Pennsylvania

Advertised in THE ADVERTISER, Oklahoma City

Date of Newspaper Advertisement	Description of Item	Shelf Price	Probable Cost	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Net Markup
March 19, 1954	Tall Milnot	.0966¢	.0895¢	7.93%	3.30%	4.63%
April 9, 1954	Qt. Miracle Whip Salad Dressing	.55	.5083	8.30	3.30	4.90
	Tall Milnot	.0966	.0895	7.93	3.30	4.63
April 16, 1954	Tall Milnot	.0966	.0895	7.93	3.30	4.63
	Qt. Miracle Whip Salad Dressing	.55	.5083	8.20	3.30	4.90

EXHIBIT A

SPEED'S SUPERMARKET #1,
30th and Shartel, Oklahoma City

April 16, 1954

Item Description	Shelf Price	Probable Cost	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Net Markup
3 # Crisco	.89¢	.8250¢	7.879%	3.30%	4.579%
28 oz Tide	.31	.2829	9.579	3.30	6.279
46-3/4 oz Oxydol	.73	.6790	7.510	3.30	4.210
Tall Can Carnation Milk	2/27	.1229	9.845	3.30	6.545
Large Crystal White Soap	.08	.07525	6.312	3.30	3.012
12 oz Treet	.47	.4442	5.808	3.30	2.508
Large P & G Soap	.08	.0747	7.095	3.30	3.795
4½ oz Gerber's Baby Food	3/25	.0775	7.526	3.30	4.226
1# Dain's	1.08	1.015	6.404	3.30	3.104
Ctn Camels	2.32	2.119	9.486	3.30	6.186
3# Spry	.89	.8250	7.879	3.30	4.529
12 oz Ivory Flakes	.31	.2829	9.579	3.30	6.279
12 oz Ivory Snow	.31	.2829	9.579	3.30	6.279
12 oz. Lux Flakes	.31	.2829	9.579	3.30	6.279
15 oz Dreft	.31	.2829	9.579	3.30	6.279
18 oz Fab	.31	.2829	9.579	3.30	6.279
18 oz Tide	.31	.2829	9.579	3.30	6.279
47 oz Fab	.73	.6790	7.510	3.30	4.210
46-3/4 oz Tide	.73	.6790	7.510	3.30	4.210
21 oz Cheer	.31	.2829	9.579	3.30	6.279
51-3/4 oz Cheer	.73	.6790	7.510	3.30	4.210
15 oz Vel	.31	.2829	9.579	3.30	6.279

EXHIBIT B (Continued on next page)

[fol. 1096]

Item Description	Shelf Price	Probable Cost	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Net Markup
18 oz Surf	.31	.2829	9.579	3.30	6.279
6 oz Liquid Joy	.31	.2829	7.579	3.30	6.279
Qt. Liquid Joy	.73	.6790	7.510	3.30	4.210
18 oz Oxydol	.31	.2829	9.579	3.30	6.279
19 oz Rinso	.31	.2829	9.579	3.30	6.279
20½ oz Dre	.31	.2829	9.579	3.30	6.279
Giant Dre	.73	.6790	7.510	3.30	4.210
Ctn Chesterfields Reg.	2.32	2.119	9.486	3.30	6.186
Ctn Lucky Strike Reg.	2.32	2.119	9.486	3.30	6.186
Ctn Old Gold Reg.	2.32	2.119	9.486	3.30	6.186
Ctn Kools Reg.	2.32	2.119	9.486	3.30	6.186
Ctn Phillip Morris Reg.	2.32	2.119	9.486	3.30	6.186
Ctn Fatima Reg.	2.32	2.119	9.486	3.30	6.186
Ctn Herbert Tareyton	2.34	2.136	9.551	3.30	6.251
Ctn Pall Mall	2.34	2.136	9.551	3.30	6.251
Ctn Raleigh Cork Tip	2.34	2.136	9.551	3.30	6.251
Ctn Raleigh Plain	2.34	2.136	9.551	3.30	6.251

SPEDS Cost FROM Book SEPT 13, 1954

Oklahoma City, Oklahoma - Wednesday, September 15, 1954

Date	Item	Size	Cost	SPEDS Cost	Safeway Retail	Shelf Price Stamp Stores	Stamp Stores Retail less 5.6	Safeway Advertised Price Sept 15th	PERCENT MARKUP AFTER STAMPS	
Sept 14	Baby Food, Gerber Strd	4½oz	3/.2331	3/.2325	3/.25	3/.25	3/.2360	3/.23	4.22	1.49
	Pineapple, Libby, Sli	#2	.2683	.2717	.29	.29	.2737	.27	1.97	1.37
	Sugar Cane	10#	.9550	.9446	1.03	1.03	.9723	.97	1.78	.245
	Crisco	3#	.8841	.8675	.95	.95	.8968	.90	1.42	3.27
	Oxydol, Detergent	Gt	.6794	.6660	.73	.73	.6891	.69	1.40	3.36
	Tide, Detergent	Gt	.6794	.6660	.73	.73	.6891	.69	1.40	3.36
	Fab Detergent	Gt	.6794	.6660	.73	.73	.6891	.69	1.40	3.36
	Corn, Del Monte, C S	#303	.1383	.1375	.15	.15	.1416	.14	2.33	2.90
	Milnot	Tall	3/.2686	3/.2688	3/.29	3/.29	3/.2737	3/.27	1.86	1.44
	Flour, Gold Medal	5#	.4647	.4700	.50	.50	.4720	.48	1.55	.143
	Salt, Mortons	26oz	2/.1808	2/.1796	2/.30	2/.20	2/.1888	2/.19	4.24	1.19
	Tea, Liptons	1/4#	.2775	.2925	.30	.30	.2832	.28	2.01	(3.75)
	Tuna, Chicken O'Sea	#1/2	.2910	.2945	.32	.32	.3020	.30	3.64	2.49
	Kleenex	200's	.1186	.1186	.13	.13	.1227	.12	3.34	3.35
	Cranberry Sauce, O.S.	#303	.1833	.1829	.20	.20	.1888	.19	2.91	3.13

EXHIBIT C

546 [fol. 10971]

SPEEDS COST FROM BOOK SEPT 13, 1954

OKLAHOMA CITY, OKLAHOMA - SEPTEMBER 17, 1954

[fol. 1098]

Date	Item	Size	Cost	Safeway Retail	Shelf Price Stamp Stores	Stamp Stores Retail less 2.8	Safeway Advertised Price Sept. 17th	Standard-Humpty Dumpty Advertised Price	PERCENT MARKUP AFTER STAMPS
Sept. 16	Crisco	3#	.8841 .845	.95	.95	.9234	.92	.90	4.26
	Milnot	Tall	3/.0896	3/.29	3/.29	3/.2819	3/.28	3/.27	(2.66)
	Flour, Gold Medal	5#	.4647 .470	.50	.50	.4860	.49	.48	4.39

EXHIBIT D

SPEEDS Cost FROM Book SEPT. 13, 1954

Oklahoma City, Oklahoma - Wednesday, September 22, 1954

Date	Item	Size	Cost	Safeway Retail	Shelf Price Stamp Stores	Stamp Stores Retail Less 5.6	Safeway Advertised Price Sept 22nd	PERCENT MARKUP AFTER STAMPS
			SPEEDS Cost					
Sept 21	Baby Food, Gerbers, Strd	4½ oz	3/.2331	3/.25	3/.25	3/.2360	3/.23	1.23 ✓
	Pineapple, Libby Sli	#2	.2683	.29	.29	.2737	.27	1.97
	Sugar, Cane	10#	.9550	1.03	1.03	.9723	.97	1.78
	Crisco	3#	.8841	.95	.95	.8968	.90	1.47
	Tide, Detergent	Gt	.6794	.73	.73	.6891	.69	1.41
	Corn, Del Monte, C S	#303	.1383	.15	.15	.1416	.14	2.33
	Milnot	Tall	3/.2688	3/.29	3/.29	3/.2737	3/.27	1.79
	Flour, Gold Medal	5#	.4647	.50	.50	.4720	.48	1.55
	Tea, Liptons	1/4#	.2775	.30	.30	.2832	.28	2.01
	Kleenex	200's	.1186	.13	.13	.1227	.12	2.34

EXHIBIT E

Stock's Cost From Book SEPT 13, 1954

Oklahoma City, Oklahoma - September 24, 1954

Date	Item	Size	Cost	Safeway Retail	Shelf Price Stamp Stores	Stamp Stores Retail Less 2.8	Safeway Advertised Price Sept 24th	Standard-Humpty Dumpty Advertised Price	FIGURE MARKUP AFTER STAMPS
Sept 23	Sugar, Cane	10#	.9550	1.03	1.03	1.00	1.00	.97	5.00
	Crisco	3#	.8841	.95	.95	.9234	.92	.90	4.26
	Tide, Detergent	Qt	.6794	.73	.73	.7095	.71	.68	4.34
	Milnot	Tall	3/.2688	3/.29	3/.29	3/.2819	.29	3/.27	4.64
	Flour, Gold Medal	5#	.4647	.50	.50	.4860	.49	.48	4.38
	Baby Food, Gerber Strd	4½oz	3/.2331	3/.25	3/.25	3/.24	3/.24	3/.23	2.88 ✓

EXHIBIT F

[fol. 1100]

SPEEDS COST FROM BOOK SEPT 13, 1954

Oklahoma City, Oklahoma - Wednesday, September 29, 1954

550
[fol. 1101]

Date	Item	Size	Cost	SPEEDS Cost	Safeway Retail	Shelf Price Stamp Stores	Stamp Stores Retail Less 5.6	Safeway Advertised Price Sept 29th	PERCENT MARKUP AFTER STAMPS
Sept 27	Pineapple, Libby Sli	#2	.2683	.2711	.29	.29	.2737	.27	1.77
	Sugar, Cane	10#	.9333	.9446	1.00	1.00	.9440	.95	1.13
	Crisco	3#	.8841	.8675	.95	.95	.8963	.90	1.42
	Oxydol	Gt	.6794	.6860	.73	.73	.6891	.69	1.41
	Tide	Gt	.6794	.6860	.73	.73	.6891	.69	1.41
	Fab	Gt	.6794	.6860	.73	.73	.6891	.69	1.41
	Milnot	Tall	3/.2688	3/.2688	3/.29	3/.29	3/.2737	3/.27	1.79
	Flour, Gold Medal	5#	.4647	.4720	.50	.50	.4720	.48	1.55
	Tea, liptons	1/4#	.2975	.2976	.30	.30	.2832	.28	(480)
	Kleenex	200's	.1186	.1186	.13	.13	.1227	.12	3.44

EXHIBIT G

SPEEDS COST FROM BOOK SEPT 27, 1954

Oklahoma City, Oklahoma - October 1, 1954

PERCENT MARKUP AFTER STAMPS

Date	Item	Size	Cost	Safeway Retail	Shelf Price Stamp Stores	Stamp Stores Retail Less 2.8	Safeway Advertised Price Oct 1st	Dickey's Advertised Price Sept 29th	Standard Humpty-Dumpty Advertised Price Oct 1st	
Sept 30	Baby Food, Gerbers	4½ oz	3/.2331	3/.25	3/.25	3/.2430	3/.23		3/.23	4.03
	Sugar, Cane	10#	.9333	1.00	1.00	.9720	.95		.95	3.78
	Crisco	3#	.8441	.95	.95	.9234	.90		.90	4.25
	Tide	Qt	.6794	.73	.73	.7095	.69		.69	4.24
	Fab	Qt	.6794	.73	.73	.7095	.69		.69	4.24
	Oxydol	Qt	.6794	.73	.73	.7095	.69		.69	4.24
	Milnot	Tall	3/.2688	3/.29	3/.29	3/.2819	3/.27	3/.27	3/.27	4.64
	Flour, Gold Medal	5#	.4647	.50	.50	.4860	.48		.48	4.38
	Kleenex	200's	.1186	.13	.13	.1263	.12		.12	7.77

EXHIBIT H

[fol. 1102]

551

SPEEDS COST FROM BOOK OCT 4, 1954

Oklahoma City, Oklahoma - October 4, 1954

Date	Item	Size	Cost	*SPEEDS Cost	Safeway Retail	Shelf Price Stamp Stores	Stamp Stores Retail less 2.8	Safeway Advertised Price Oct 4th	PERCENT MARKUP AFTER STAMPS	
Oct 3	Baby Food, Gerber, Strd	4½oz	3/.2331	9¼ .2475	3/.24	3/.25	3/.24	3/.24	4.08	4.33
	Sugar, Cane	10#	.9333	.9266	.0797	1.00	.9720	.97	3.09	✓
	Crisco	3#	.8841	.8695	.92	.95	.9234	.92	4.26	6.06
	Tide	Qt	.6794	.6660	.71	.73	.7095	.71	4.24	4.14
	Oxydol	Qt	.6794	.6660	.71	.73	.7095	.71	4.24	
	Fab	Qt	.6794	.6660	.71	.73	.7095	.71	4.24	
	Pineapple, Libby Sliced	#2	.2683	.2496	.28	.29	.2818	.28	4.79	

EXHIBIT I

SPEEDS COST BOOK OCT. 4, 1954

Oklahoma City, Oklahoma - Wednesday, October 6, 1954

Date	Item	Size	SPEEDS Cost	Safeway Retail	Shelf Price Stamp Stores	Stamp Stores Retail Less 5.6	Safeway Advertised Price Oct 6th	PERCENT MARKUP AFTER STAMPS
Oct 5	Baby Food, Gerbers	4½oz	3/.2331	3/.24	3/.25	3/.2360	3/.23	1.22
	Pineapple, Libby Sliced	#2	.2683	.28	.29	.2737	.27	1.99
	Sugar, Cane	10#	.9333	.97	1.00	.9440	.95	1.13
	Crisco	3#	.8841	.92	.95	.8968	.90	1.42
	Oxydol	Qt	.6794	.69	.73	.6891	.69	1.41
	Fab	Qt	.6794	.69	.83	.6891	.69	1.41
	Tide	Qt	.6794	.69	.73	.6891	.69	1.41
	Corn, Del Monte, C S	#303	.1383	.14	.15	.1416	.14	2.33
	Milnot	Tall	3/.2688	3/.28	3/.29	3/.2737	3/.27	1.79
	Flour, Gold Medal	5#	.4647	.48	.50	.4720	.48	1.54
	Kleenex	200's	.11886	2/.25	.13	.1227	.12	3.34

EXHIBIT J

SPEEDS COST FROM BOOK OCT 4, 1954.

Oklahoma City, Oklahoma - October 8, 1954

Date	Item	Size	Cost SPEEDS COST	Safeway Retail	Shelf Price Stamp Stores	Stamp Stores Retail Less 2.8	Safeway Advertised Price Oct 8th	Crowder's Advertised price Oct 7th	Dickey's Advertised Price Oct 7th (Stamps)	I G A Advertised Price Oct 8th	PERCENT MARKUP AFTER STAMPS
Oct 7	Baby Food, Gerbers	4½ oz	3/.2331	3/.24	3/.25	3/.24	3/.23			3/.23	2.88
	Pineapple, Libby Sliced	#2	.2683	.28	.28	.2720	.27				1.36
	Oxydol	Qt	.6794	.71	.69	.6706	.69	.69		.69	(1.30) x
	Tide	Qt	.6794	.71	.69	.6706	.69	.69		.69	(1.30) x
	Fab	Qt	.6794	.71	.69	.6706	.69	.69		.69	(1.30) x
	Cheer	Qt	.6794	.73	.73 ✓	.71	.69	.69		.69	4.31
	Corn, Del Monte CS	#303	.1383	.14	.15 ✓	.1458	.14			.14	5.15
	Flour, Gold Medal	5#	.4647	.48	.50	.4860	.48			.48	4.38
	Kleenex	200's	.1186	2/.25	.13	.1263	.12			.12	6.10
	Sugar, Cane	10#	.9333	.97	1.00	.97	.95 ✓		.95	.95 ✓	3.78
	Milnot	Tall	3/.2688	3/.28	3/.29	3/.2819	3/.27			3/.27	4.64 ✓
	Crisco	3#	.8841	.92	.90	.8748	.90	.90		.90	(1.05) x

EXHIBIT K

SPEEDS COST FROM BOOK OCT 4, 1954

Oklahoma City, Oklahoma - Wednesday, October 13, 1954

[fol. 1106]

Date	Item	Size	Cost	SPEEDS Cost ↓	Safeway Safeway Retail	Shelf Price Stamp Stores	Stamp Stores Retail Less 5.6	Safeway Advertised Price Oct. 13th	PERCENT MARKUP AFTER STAMPS
Oct 7	Pineapple, Libby Sliced	#2	.2683	.2696	.28	.28	.2643	.27	(1.49) *
	Sugar, Cane	10#	.9333	.9266	.97	1.00	.9440	.95	1.13
	Crisco	3#	.8841	.8695	.92	.90	.8496	.86	(3.99) *
	Tide	Qt	.6794	.6660	.71	.69	.6513	.69	(4.13) *
	Fab	Qt	.6794	.6660	.71	.69	.6513	.69	(4.13) *
	Oxydol	Qt	.6794	.6660	.71	.69	.6513	.69	(4.13) *
	Milnot	Tall	3/.2688	3/.2688	3/.28	3/.28	3/.2643	3/.27	(1.67) *
	Flour, Gold Medal	5#	.4647	.4700	.48	.50	.4720	.48	1.55 -

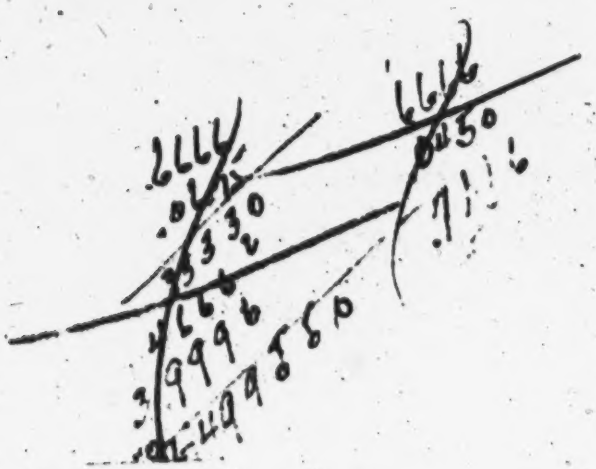


EXHIBIT L

SPEEDS COST FROM BOOK OCT 4, 1954

Oklahoma City, Oklahoma - October 15, 1954

Date	Item	Size	Cost SPEEDS Cost	Safeway Retail	Shelf Price Stamp Stores	Stamp Stores Retail Less 2.8	Safeway Advertised Price Oct. 15	Dickey's Advertised Price Oct 13	Crowder's Advertised Price Oct 13	Kiespert Window Sign Oct 13	Rayhills Window Sign Oct 13	PERCENT MARKUP AFTER STAMPS
Oct 14	Baby Food, Gerbers	4½ oz	3/.2331	3/.24	3/.25	3/.2430	3/.22			3/.22		4.08
	Pineapple Libby Sliced	#2	.2683	.28	.29	.2818	.27					4.99
	Sugar, Cane	10#	.9333	.97	.95	.9234	.95		.95			1.06
	Crisco	3#	12/10.37	.89	.86	.8359	.86				.85	(1.37)*
	Tide	Qt	.6794	.71	.69	.6706	.68			.68		(1.30)*
	Cheer	Qt	.6794	.73	.69	.6706	.68	.69		.68		(1.30)*
	Fab	Qt	.6794	.71	.69	.6706	.68			.68		(1.30)*
	Oxydol	Qt	.6794	.71	.69	.6796	.68			.68		(1.30)*
	Milnot	Tall	3/.2688	3/.28	3/.27	3/.2624	3/.27	.09	3/.27			(2.56)*
	Flour, Gold Medal	5#	.4647	.48	.48	.4663	.48					.34
	Miracle Whip	Qt	12/5.79	.52	.53	.5003	.49	.49				5.39

EXHIBIT M

[fol. 1107]

SPEEDS COST FROM BOOK OCT. 18, 1954

Oklahoma City, Oklahoma - Wednesday, October 20, 1954

Date	Item	Size	Cost SPEEDS Cost	Safeway Retail	Shelf Price Stamp Stores	Stamp Stores Retail less 5.6	Safeway Advertised Price Oct 20th	Kiespert's Window-Sign Oct 19th	PERCENT MARKUP AFTER STAMPS
Oct 18	Baby Food, Gerbers	4½ oz	3/.2331	3/.24	3/.25	3/.2360	3/.23		1.23
	Pineapple, Libby Slices	#2	.2683	.2683	.28	.2643	.27		1.49 x
	Sugar, Cane	10#	.9333	.97	.95	.8968	.95	.95	(3.91) x
	Crisco	3#		.89	.89	.8401	.86	.85	(.89) x
	Oxydol	Gt.	.6794	.71	.71	.6702	.69	.65	(1.34) x
	Tide	Gt.	.6794	.71	.69	.6513	.69	.65	(4.14) x
	Fab	Gt.	.6794	.71	.69	.6513	.69	.65	(4.14) x
	Milnot	Tall	3/.2688	3/.28	3/.27	.2548	3/.27	3/.25	(6.21) x
	Flour, Gold Medal	5#	.4647	.48	.50	.48	.48	.45	3.19
	Kleenex	200's	.1186	2/.25	.13	.1227	2/.25		3.34
	Miracle Whip	Qt.		.52	.53	.5003	.50		5.40 x

EXHIBIT N

[fol. 1108]

SPEEDS COST FROM BOOK OCT 18, 1954

Oklahoma City, Oklahoma - October 22, 1954

Date	Item	Size	Cost SPEEDS Col	Safeway Retail	Shelf Price Stamp Stores	Stamp Stores Retail Less 2.8	Safeway Advertised Price Oct 22nd	Dickey's Advertised Price Oct 20 (Stamps	Dickey's Advertised Price Less 2.8	PERCENT MARKUP AFTER STAMPS
Oct 20	Baby Food, Gerbers	4½ oz	3/.2331 3/.23	3/.24	3/.25 ✓	3/.2430	3/.22			4.01
	Pineapple, Libby Sliced	#2	.2683	.28	.29	.2737	.27			1.99
	Sugar, Cane	10#	.9333	.97	1.03 ✓	.9723	.92	.95	.92	4.01
	Crisco	3#		.89	.95	.9234	.84	.86	.84	6.20
	Tide	Qt	.6794	.71	.73 ✓	.71	.67	.69	.67	4.31
	Fab	Qt	.6794	.71	.73 ✓	.71	.67			4.31
	Milnot	Tall	3/.2688	3/.28	3/.29 ✓	3/.2819	3/.26	.09	3/.26	4.25
	Flour, Gold Medal	5#	.4617	.49	.50	.49	.48			6.16
	Kleenex	200's	.1186	2/.25	.13	.1263	2/.23	.12	2/.23	6.10 ✓
	Miracle Whip	Qt		.52	.50	.4860	.48	.49	.48	2.61

EXHIBIT O

[fol. 1110]

CALCULATION OF MARKUP PERCENTAGE AND TRADING STAMPS

Speed's 715 N.W. 36th Oklahoma City, Oklahoma

The following items were purchased on February 24, 1955, at prices shown as evidenced by an itemized cash register detail tape.

Description of Item	Size	Retail Price Each	Probable Cost Each	Probable Net Percent Markup On Cost	Net Retail After Deducting 2.8% for Stamps	Probable Net Percent Markup On Cost
Betty Crocker Yellow Cake Mix	20oz	.31	.2854	8.61	.3013	5.57
Welch Grape Jelly	10oz	.21	.1923	9.23	.2041	6.13
Milnot	Tall	1/.29	0895	7.93	.0938	4.80
Meal Dog Food	16oz	2/.27	.1250	8.00	.1312	4.96
Brooks Catsup	12oz	.19	.1765	7.64	.1846	4.56
Crisco	3#	.91	.8475	7.37	.8865	4.36
Tide	Qt	.73	.6794	7.44	.7095	4.43
Campbells Tomato Soup	#1	2/.23	.1060	8.49	.1117	5.37
Jello Instant Pudding	Pkg.	.09	.0904	(.44)	.0874	(3.43)

EXHIBIT P

560
[fol. 1111]

DEFENDANT'S EXHIBIT 11

DON'T LET 'EM KID YOU! CHECK ALL THE PRICES

OCT. 11 — OCT. 16

IGA *ALWAYS features everyday low prices!*

SUGAR	PURE CANE C & H OR IMPERIAL	10 LBS. 95¢	MILNOT	"IT WHIPS"	3 TALL CANS 27¢	GERBERS	STRAINED BABY FOODS 3 CANS 23¢
FLOUR	GOLD MEDAL	5 LBS. 48¢	MIRACLE WHIP	QT. 53¢		JUICE	LIBBY'S TOMATO 12 OZ CAN 10¢
CRISCO		3 LBS. 90¢	KLEENEX	IN THE POP-UP BOX 200 CT PKG 12¢		CORN	DEL MONTE CREAM STYLE NO. 303 CAN 14¢
						CHEEZ WHIZ	KRAFTS 16 OZ JAR 46¢
						FAB	DETERGENT GIANT PACKAGE 69¢
						TIDE	DETERGENT GIANT PACKAGE 69¢
						OXYDOL	DETERGENT GIANT PACKAGE 69¢

ARMOUR STAR CUT FROM SHANK ENDS

HAM PIECES LB **43¢**

SKINLESS WIENERS 69¢
SLICED BACON LB 59¢
SLICED BACON LB 69¢
ROLL SAUSAGE 1 LB ROLL 39¢
CANNED HAMS 5½ LBS EACH
SMALL HAMS LB 53¢
HAM PIECES LB 49¢
PIGFEET LB 39¢
BEEF ROAST LB 49¢
ROUND STEAK LB 79¢
SHORT LOIN SLICED
SHORT SIRLOIN SLICED
SHORT SIRLOIN SLICED
PHILADELPHIA CREAM CHEESE 8 OZ 27¢

Enjoy Tomorrow's Lunch Today

T.V. MEALS

SPAGHETTI WITH MEAT 16 OZ CAN 25¢
CORNED BEEF HASH 16 OZ CAN 29¢
VIENNA SAUSAGE 2 CANS 35¢

PEANUT BUTTER 11 OZ GLASS 37¢
BEEF STEW 16 OZ CAN 35¢
CHOPPED HAM OZ CAN 49¢
TREET 12 OZ CAN 42¢
TAMALES 2 NO. 303 CANS 39¢
CHILI PLAIN 15¢ OFF! 16 OZ CAN 39¢
CHILI WITH BEANS 15¢ OFF! 16 OZ CAN 24¢
DOG FOOD DASH 2 CANS 25¢

"Bake 'em tall, tender, and terrific!"

WHITE CHOCOLATE **DUNCAN HINES CAKE MIXES** YELLOW SPICE

31¢

CENTRAL AMERICAN

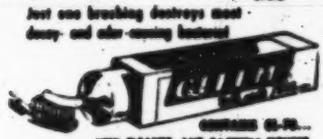
BANANAS 2 LBS. 27¢

ORANGES CALIFORNIA SWEET VALENCIAS 2 LBS 27¢
CELERY CRISP TENDER STALKS LB 9¢
POTATOES 10 LBS 27¢

For All-Star Clay Pooch Wig
YELLOW CAKE PEARLS
PET EVAPORATED MILK
MINIATURE MARSHMALLOWS

BAB-O	THE FOAMING CLEANSER 2 CANS	21¢
BRIGHT BLUE	LARGE PKG	31¢
SILVER DUST	WITH FACE CLOTH LARGE PKG	33¢
VEL	LARGE PKG	31¢
DUZ	LARGE PKG	31¢
CHEER	DETERGENT LARGE PKG	31¢
IVORY FLAKES	LARGE PKG	31¢
SOAP	CASHMERE BOUQUET 3 REG SIZE BARS	25¢
SOAP	CASHMERE BOUQUET 2 BATH SIZE BARS	25¢

Just one brushing destroys most decay- and odor-causing bacteria!



GLEEM ECONOMY SIZE

★★ *IGA TV SPECIAL* ★★
CINCH ASSORTED
CAKE MIXES 17-OZ PKG 31¢

RICELAND
LONG GRAIN RICE
1 LB PKG 17¢ 2 LB PKG 33¢

CHICKEN of the SEA
TUNA BITE-SIZE CAN 31¢

CUPS AND CONES
SAFE-T PKG OF 60 17¢

ICE CREAM NEW STATE GOLDEN ROYAL PINT 19¢
AEROSOL BOMB FLORIENT 5½-OZ CANS 89¢
OLD-WHITE FLAKES PKG 19¢

CAIN'S DATED
COFFEE LB $1.07

GREEN GIANT PEAS	NO. 303 CAN	19¢
SLICED PIE APPLES	NO. 2 CAN	27¢
Blueberry Pie Mix	2 NO. 2 CANS	79¢
PEACH PIE MIX	2 NO. 2 CANS	69¢
CHERRY PIE MIX	2 NO. 2 CANS	69¢

MARYLAND CLUB COFFEE LB $1.45

SHORTENING
ADVANCE 3 LB CARTON 79¢

BORAX BLEACH QT. 19¢ ½ GAL. 27¢

FROZEN FOOD SPECIALS
PINEAPPLE
DOLE FROZEN CHUNKS 13½-OZ CAN 27¢

TUNA PIE	CHICKEN OF THE SEA	REG.	39¢
CHICKEN PIE	SWANSON	8-OZ	29¢
BEEF PIE	SWANSON	8-OZ	29¢
TURKEY PIE	SWANSON	8-OZ	29¢
PERCH	ICELANDIC	1 LB	47¢
HALIBUT STEAK	ICELANDIC	1 LB	65¢
HADDOCK FILLETS		1 LB	59¢

PRICES EFFECTIVE FRIDAY AND SATURDAY

IGA

THERE'S AN IGA EVERY WHERE FOR YOU

Phone JA 5-2202 for Nearest Location

[fol. 1112]

DEFENDANT'S EXHIBIT 12

LOOK! RED HOT

NEW LOW PRICES ON DEL MONTE FOODS

MILNOT 3 TALL CANS 27c

CRISCO 3 LB. TIN 86c

SUGAR 10 LB. PURE CANE 95c

PICKLES FANCY DILL 24-OZ. BTL. 35c

PEAS EARLY GARDEN 2 NO. CANS 37c

JUICE TOMATO 3 46-OZ. CANS 85c

COCKTAIL FRUIT 3 NO. CANS 69c

JUICE PINEAPPLE 3 46-OZ. CANS 89c

PINEAPPLE 3 75c

PINEAPPLE 3 85c

PEACHES 3 85c

DEL MONTE CATSUP 17c

DEL MONTE CORN 14c

DEL MONTE CORN 3

DEL MONTE PUMPKIN 3

DEL MONTE RAISINS 19c

DEL MONTE BEANS 3

POTATOES

US NO. 1 10 LBS. 49c

YAMS U.S. NO. 1 TIDIAS POUND 9c

TOMATOES CALIFORNIA'S FINEST CELLO CARTON 10c

SWEET TOKAY GRAPES 2 LBS. 25c

FROZEN PIES SWANSON BEEF CHICKEN, TURKEY 29c

PEAS SNOW CROP FROZEN 2 10-OZ. PKGS. 37c

CUT CORN SNOW CROP FROZEN 2 10-OZ. PKGS. 33c

ORANGE JUICE SNOW CROP FROZEN 2 6-OZ. CANS 39c

NEW OWNER SALE!

OCT. 15 and 16

ROHR'S IGA SUPER MARKET

520 BRITTON AVE., BRITTON

TOBATS, FREE GIFTS FOR ALL BALLOONS, ICE CREAM, COFFEE

DON'T MISS THE BIG CELEBRATION

DROP IN AND SHAKE HANDS WITH OTTO ROHR, THE NEW OWNER

• SWIFT'S ALL SWEET • MARGARINE WITH COUPON LB. 19c

PORK ROAST LITTLE PIG LOIN ENDS LB. 35c

Beef Roast 49c

Round Steak 79c

Small Hams 59c

Wieners 45c

Liver 19c

Sausage 49c

SLICED BACON 2

SLICED BACON 55c

FOR YOU

SKINNER'S MACARONI or SPAGHETTI 2 PKGS. 21c

ROLL SAUSAGE 1-LB. ROLL 35c

MARYLAND CLUB COFFEE CAN $1.14

IGA TV SPECIALS

ZESTEE GRAPE JELLY 30c

MISSION BEVERAGES 6 CANS 59c

SHAWNEE CORN MEAL 5 LB. 41c

REAL-KILL

O-CELLO COLORED SPONGE NO. 1-C 19c NO. 2 33c

CUTS AND CORES 17c

FROZEN DESSERT 47c

GREEK STYLE TUBA 39c

DONALD DUCK ORANGE JUICE 33c

POTATOES 19c

PRIMA 45c

SKINNER'S 17c

MEDIUM SIZE 27c

LARGE SIZE TUBE 47c

Prices Effective Today and Saturday

IGA

OCT 17 '56 No. 1045-55

E. J. GRACHE, Reporter

DEFENDANT'S EXHIBIT 13

Y'ALL COME

THE SUN SMILES EVERY DAY ON LOW PRICES AT....

IGA

JUICE — 4 CANS $1

JUICE — 3 CANS 95¢

PINEAPPLE — 4 CANS $1

PEACHES — 3 CANS $1

TUNA — 4 CANS $1

SNO KREEM — 3 LBS. 79¢

SUGAR — 10 LBS. 95¢

FAB — GIANT PACKAGE 68¢

OXYDOL — GIANT PACKAGE 68¢

KLEENEX — 200-COUNT PACKAGE 12¢

PORK ROAST LB. 35¢

LITTLE PIG LOIN ENDS

KRAFT VELVEETA 2 LBS. 79c

KRAFT'S BARBECUE WIENER CHICKEN BARBECUE

BEVERAGE 49c

GROUND BEEF 39c

SPARE RIBS 49c

BOIL SAUSAGE 39c

BIKE SAUSAGE 39c

SLICED BACON 59c

SLICED BACON 2 LBS. 79c

SLICED BACON 49c

SLICED WIENERS 3 LBS. $1

SLICED WIENERS 49c

KRAFT'S ASST CARAMELS 14 OZ. PKG. 35c FOR MAKING THESE DELICIOUS, TASTY CARAMEL APPLES

APPLES RED DELICIOUS LB. 10¢

Rome Beauty Crisp, Tarty for Baking

APPLES LB. 10¢

QUICK 'N EASY WAY TO MAKE 'EM AT HOME ON EVERY PACKAGE OF KRAFT CARAMELS

★

IGA FROZEN FOOD SPECIALS

FISH STICKS SNOWCROP FROZEN 10-OZ. PKG. 89¢

CAULIFLOWER SNOWCROP FROZEN 10-OZ. PKG. 29¢

CUT OKRA SNOWCROP FROZEN 2 5-OZ. PKGS. 39¢

BROCCOLI SNOWCROP FROZEN SPEARS 10-OZ. PKG. 27¢

ICELANDIC FROZEN PERCH LB. PKG. 47¢

ICELANDIC FROZEN CATFISH LB. PKG. 55¢

ICELANDIC FROZEN COD LB. PKG. 45¢

TUNA PIE CHICKEN OF THE SEA 8-OZ. PKG. 39¢

BIG TOP

CRYSTAL TUMBLERS 8-OZ. 37¢

CRYSTAL GOBLETS 10-OZ. 43¢

15-PIECE SET CRYSTAL WARE $1.99

MEADOLAKE MARGARINE

COLORED CUBES LB. 29¢

WOODBURY SOAP 3 BATH BARS 25¢

WOODBURY SOAP 3 REG. BARS 22¢

PALMOLIVE SOAP 3 REG. BARS 25¢

PALMOLIVE SOAP 2 BATH BARS 25¢

TIDE 2 LGE. PKGS. 33¢

KRISPY FLAKES LGE. PKG. 31¢

SUPER SUDS LGE. PKG. 31¢

O-CEDAR SPONGE 10¢

CUELLAR CHILI CON CARNE NO. 300 CAN 37¢

CUELLAR TAMALES NO. 300 CAN 29¢

SWEET AND TENDER CARROTS PKG. 10¢

UTILITY RUSSETS POTATOES 25 LB. BAG 73¢

MARYLAND CLUB COFFEE LB. CAN $1.14

ICE CREAM NEW STATE GOLDEN ROYAL PINT 19¢

SPRY SHORTENING 3 LB. TIN 89¢

DEVILED HAM GOODWOOD CAN 21¢

CUPS AND COVERS SAVE-T PKG. 17¢

REAL-KILL GOODLESS STAINLESS 69¢

IGA TV SPECIALS

CHOP SUEY — 39¢

CHICKEN — 39¢

BEEF CHOP SUEY — 39¢

AMERICAN BEAUTY MACARONI and SPAGHETTI 1-LB. PKG. 22¢

YEARLING FROZEN BEEF STEAKS 12-OZ. PKG. 89¢

OKRA TRAPPEY'S CUT 2 NO. 2 CANS 27¢

CAKE MIXES DUNCAN HINES PKG. 31¢

LIBBY'S DEEP BROWN BEANS 2 14-OZ. CANS 27¢

LIBBY'S RED SOCKEYE SALMON TALL CAN 69¢

Try these!

3 CANS 25¢

— 20¢

★ PRICES EFFECTIVE TODAY AND SATURDAY ★

DOUBLE COUPON Worth 8¢ on 2nd can

ROSSELL GRILL

COUPON No. 2

[fol. 1114]

DEFENDANT'S EXHIBIT No. 15

Customer Survey In Norman, Okla.

	Safeway	Riteway	Uhle's
Customers in Stores at 9:30 A.M.			
4/15/53 (Wed)	10	9	5
4/23/53 (Thurs)	11	9	4
4/28/53 (Tues)	12	3	4
Customers Entering Stores Between 9:30 A.M. & 11 A.M.			
4/15/53 (Wed)	51	136	82
4/23/53 (Thurs)	82	33	36
4/28/53 (Tues)	76	43	40
Customers in Stores at 11 A.M.			
4/15/53 (Wed)	7	28	17
4/23/53 (Thurs)	4	5	6
4/28/53 (Tues)	9	5	5
Customers in Stores at 4:00 P.M.			
4/15/53 (Wed)	11	26	26
4/23/53 (Thurs)	12	12	8
4/28/53 (Tues)	19	13	5
Customers Entering Stores Between 4:00 & 6:00 P.M.			
4/15/53 (Wed)	208	383	252
4/23/53 (Thurs)	307	281	132
4/28/53 (Tues)	226	233	124
Customers In Store at 6:00 P.M.			
4/15/53 (Wed)	19	65	19
4/23/53 (Thurs)	35	23	10
4/28/53 (Tues)	22	20	9

[fol. 1115]

DEFENDANT'S EXHIBIT No. 16

Survey on the Importance of Trading Stamp Plans In Norman, Oklahoma

Oxford Business Surveys
Study No. 53-330
September 1, 1953

(Page 1)

INTRODUCTION

The purpose of this survey, requested by the Oklahoma City Zone, was to determine the importance of the Sperry and Hutchinson Green Stamp plan and other premium plans in Norman, Oklahoma. A secondary purpose was to get a measure of Safeway's competitive position in Norman, both in terms of number of customers and reputation among food buyers.

During the last week in July a total of 310 interviews were conducted with a sample of housewives living in the city of Norman. We also counted customers as they left Safeway, and Riteway and Uhle's, our major competitors, on a Wednesday, Friday, and Saturday.

(Page 2)

[fol. 1116]

BRIEF SUMMARY

Norman housewives are very enthusiastic about trading stamps and Riteway's premium plan, and over three-quarters of them participate in these plans regularly. Even among women who buy most of their food at Safeway, seven out of ten regularly save the stamps they get at other stores.

The appeal of trading stamps and premium plans has a strong influence in determining where Norman consumers shop for food. One woman out of six that we interviewed said she did not buy more of her food at Safeway because we do not give trading stamps. Over half of those who buy most foods at Uhle's said they shopped there to get stamps, and over a quarter who buy most at Riteway mentioned their premium plan as the main reason for going

to that store. Wednesday is "double value" day at Riteway and Uhle's and traffic on Wednesdays increases at the expense of Safeway.

However, our survey gives strong indications that stamp or premium plans are not an insurmountable threat, and that customers can be influenced more by other store qualities than by stamp plans. For example, Norman women who said they shopped at Riteway because it was a new, attractive store outnumbered those who said they went there because of the premium plan.

Our own performance in Norman indicates we can hold our own against a competitor with better store facilities and a very attractive premium plan (Riteway). Among Norman families, almost as many shop regularly at Safeway (37%) as at Riteway (38%), and on the basis of our customer count we estimate that Riteway's sales are only about $1,600 a week higher than ours. (Uhle's is a poor third place with an estimated $12,000.) We have the best reputation of any food store for low prices, quality produce and friendly employees. However, we could show improvement relative to competitors on the attractiveness of our store, our selection of groceries and our meats.

[fol. 1117] SURVEY FINDINGS

Where Housewives Shop Regularly[1]

We found that nearly four out of five of the people we interviewed had shopped at Safeway at least once during the week preceding the interviews. Approximately the same number had shopped at Riteway.

	Percent of Those Interviewed Who Shopped at This Store
Riteway	38%
Safeway	37
Uhle's	24
17 other grocery stores	69
	100%*

Where Housewives Buy Most Foods

Over a quarter of the people we interviewed said they bought most of their food at Safeway, more than named any other store.

	Percent of Those Interviewed Who Buy Most At:
Safeway	27%
Riteway	16
Uhle's	13
17 other grocery stores	44
	100%

* Column totals more than 100% because some housewives shopped at more than one store.

[1] At least once during the week preceding the interview.

[fol. 1118] Why Customers Buy Most At:

Customers said they bought most of their groceries at Safeway because of reasonable prices, friendly and courteous employees, and the selection and arrangement of groceries. These points agree with housewives' rating on reputation. Customers who bought most of their groceries at Riteway said they did so because it is a big, new and attractive store, and because of the premium plan. Over half the customers who said they shopped for most of their groceries at Uhle's said they did so because of green stamps.

	Percent of Housewives Who Buy MOST at:		
	Safeway	Riteway	Uhle's
Reasonable prices	36%	—	9%
Selection & arrangement	36	12%	12
Friendliness & courtesy	34	—	—
Parking	21	20	—
Near home	18	16	7
Good meats	8	—	17
Good fruits & vegetables	6	—	—
On way home, handy	6	—	12
Habit	7	—	—
Stamps, premiums	—	28√	57√
Big, new, attractive store	—	30	—
Clean & cool	—	20	9
Fast service	—	10	—
Home-town store	—	—	9
Personal friend	—	—	—
Total customers who buy Most at this store	100%*	100%*	100%*

* Column totals more than 100% because some housewives gave more than one reason.

[fol. 1119] Why Housewives Do Not Buy Most at Safeway

We then asked those who did not shop regularly or did not buy most of their food at Safeway why they didn't do more of their shopping at our Store. The principal reasons they gave were that it is out of the way, or too far away, and that we don't give premiums or trading stamps.

	% of Total Housewives
Location too far away, out of way	22%
No trading stamps, premiums	15
No delivery service, credit[1]	10
Poor quality meat	5
Checkout service is slow and crowded	6
Store is crowded	5
Don't like packaged vegetables, poor quality	4
Like home-owned store	4
Don't like packaged meats	3
Can't find anything, don't know arrangement	3
Dirty, messy, not neat	2
Total who don't buy most at Safeway	73%*
Buy most food at Safeway	27
Total Interviews	100%

Extent to Which Shoppers Save Trading Stamps

Over three out of four people we interviewed said they saved trading stamps regularly.

	% of Total Housewives
Save stamps regularly	77%
Save stamps occasionally	6
Don't save stamps	17
Total customers	100%

All of the housewives who buy most of their groceries at Uhle's save trading stamps. Seven out of ten customers who buy most at Safeway regularly save the stamps they get at other stores.

[1] Riteway and Uhle's will deliver.

* Column totals more than 73% because some women gave more than one reason.

[fol. 1120] Extent to Which Shoppers Save Trading Stamps —(Cont.)

	% of Housewives Who Buy MOST at:			
	Safeway	Riteway[1]	Uhle's	Other
Save stamps regularly	71%	88%	100%	69%
Save stamps occasionally	6	4	—	9
Don't save stamps	23	8	—	22
Total who buy MOST at each store	100%	100%	100%	100%

Where Customers Get Stamps

About half of the people we interviewed said they got stamps at Brown's department store. 30% said they got them at Uhle's.

Get Stamps At:	Total Interviews = 100%
Brown's department store	51%
Uhle's	30
Riteway[1]	19
Mack's grocery	8
D-X service station	5
Davis paint store	5
Greenleaf grocery	4
Phillips service station	4
Sinclair service station	3
Low's department store	2
Johnson grocery	2
Roy's drug store	1
DeLuxe cleaners	1
Total who save stamps	83%*
Don't save stamps	17
Total Interviews	100%

[1] In the case of Riteway, customers save cash register tapes rather than trading stamps. See Appendix for description of Riteway's premium plan.

* Column totals more than indicated because some people collect stamps from more than one store.

[fol. 1121] How Shoppers Get to the Store

Nine out of ten customers of Safeway drive to the store, slightly more than drive to other stores in Norman.

	Regular Safeway Customers	Non-Customers
Usually drive	90%	80%
Usually walk	9	11
Telephone orders and have foods delivered	—	8
Other (taxi,–bicycle)	1	1
Total customers	100%	100%

Customer Traffic and Sales at Safeway vs. Competitors

Projecting Safeway's average sale per customer and share of the week's business done on Wednesday, Friday and Saturday to the count of customers at Riteway and Uhle's on these three days, we can estimate weekly sales of these two competitors. Riteway's sales are slightly higher than Safeway's; Uhle's are considerably lower.

	Safeway	Riteway (Projected)	Uhle's (Projected)
Total customer count—three days	1,995	2,159	1,281
Average transaction—three days	$3.96	($3.96)	($3.96)
Total sales—three days	$7,898	($7,898)	($5,072)
% of weekly business during three days	41.5%	(41.5%)	(41.5%)
Total projected weekly sales	$19,023	($20,600)	($12,221)

[fol. 1122]

Appendix

Description of Facilities of Major Food Stores in Norman

Riteway, Eufaula & Crawford

Dimensions of building: 12,600 square feet.

Dimensions of sales room: 7,875 square feet.

Five revolving checkstands, widely spaced.

Parking lot space for 60 cars.

Store hours: 8 a.m. to 9 p.m. on weekdays,
9 a.m. to 9 p.m. on Sundays.

Meat is a combination of self-service and butcher service.

Center shelving is low and widely spaced.
Prominent display given to premiums redeemable with cash register receipt slips.

Store is built of yellow brick, has plate glass window across front.

Premium Plan: Riteway doesn't give its customers trading stamps, as such, but offers premiums in exchange for accumulated cash register receipts. Customers regard these receipts as they would trading stamps. There is no catalog of premiums as there is in most stamp plans, but premium items are on display in the store, and selections are made there. Each premium is marked with a sign stating price, amount of cash register receipts necessary to redeem it, and how much this is in equivalent to stamps. For instance, a steam iron would be marked: "Price $18.50 . . . Free with $675 in cash register receipts . . . " and below this in smaller print: "It would take 6 books (or $720) in trading stamps for this premium". If half the amount necessary to redeem the premium has been saved, customers can pay cash for the balance.

[fol. 1123]

Calculation of Markup Percentages and S & H Green Trading Stamps Cost

MISKOVSKY, 3031 NW 23rd, Oklahoma City

A. The following items were purchased and paid for at prices shown as evidenced by an itemized cash register detail tape:

Item No.	Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Net Markup
1	40 oz Bisquik	.52¢	.3889¢	7.997%	3.30%	4.697
2	47 oz Fab	.73	.6790	7.510	3.30	4.210
3	10# Gold Medal	.99	.91	8.791	3.30	5.491
4	14-1/2 oz Mil-ot	3/29	.0896	7.924	3.30	4.624
5	Lrg. Crystal White Soap	3/25	.07525	(.333)	3.30	(3.633)
6	15 oz Dreft	.31	.02829	9.579	3.30	6.279
7	1# Caino Coffee	1.08	1.015	6.404	3.30	3.104
8	3# Crisco	.89	.8250	7.879	3.30	4.579
9	32 oz Miracle Whip	.55	.5083	8.204	3.30	4.904
10	1# Maxwell House	1.19	Not calculated.			
11	Jello, All (4) Flavors	.08	.0729	9.739	3.30	6.439
12	12 oz Peter Pan Plain	.33	.3021	9.235	3.30	5.935
13	12 oz Treet	.47	.4442	5.808	3.30	2.508
14	1 Campbell's Tomato	2/23	.1052	9.316	3.30	6.016
15	4-1/2 oz. Gerber's Str. All flavors except egg yolk	3/25	.0775	7.526	3.30	4.226
16	Ctn Pall Mall	2.34	2.136	9.641	3.30	6.251
17	15¢ Prince Albert Tbcc	.15	Not calculated			
		$10.15				
	Sales Tax	.16				
	Total Pur.	$10.61				

B. S & H Green Trading Stamps were received on the total purchase above, except on sales tax.

C. The following items of different brands or sizes of the above items were inspected as to price displayed:

Item No	Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup On Cost	Percent Trading Stamp Cost	Percent Net Markup
	3# Spry	.89	.8250	7.879	3.30	4.579
	12 oz Ivory Flakes	.31	.2829	9.579	3.30	6.279
	12 oz Ivory Snow	.31	.2829	9.759	3.30	6.279
	12 oz Lux Flakes	.31	.2829	9.579	3.30	6.279
	18 oz Fab	.31	.2829	9.579	3.30	6.279
	18 oz Tide	.31	.2829	9.579	3.30	6.279
	46-3/4 oz Tide	.73	.6790	7.510	3.30	4.210
	21 oz Cheer	.31	.2829	9.579	3.30	6.279
	51-3/4 oz Cheer	.73	.6790	7.510	3.30	4.210
	15 oz Vel	.31	.2829	9.579	3.30	6.279
	18 oz Surf	.31	.2829	9.579	3.30	6.279
	6 oz Joy Liquid	.31	.2829	9.579	3.30	6.279
	46-1/2 oz Oxydol	.73	.6790	7.510	3.30	4.210
	19 oz Rinso	.31	.2829	9.579	3.30	6.279
	20-1/2 oz Dua	.31	.2829	9.579	3.30	6.279
	Giant Dua	.73	.6790	7.510	3.30	4.210
	Ctn Camels Reg	2.32	2.119	9.486	3.30	6.186
	Ctn Chesterfield Reg	2.32	2.119	9.486	3.30	6.186
	Ctn Lucky Strike Reg	2.32	2.119	9.486	3.30	6.186
	Ctn Old Gold Reg	2.32	2.119	9.486	3.30	6.186
	Ctn Kools	2.32	2.119	9.486	3.30	6.186
	Ctn Phillip Morris	2.32	2.119	9.486	3.30	6.186
	Ctn Fatima	2.32	2.119	9.486	3.30	6.186
	Ctn Herb. Tareyton	2.34	2.138	9.551	3.30	6.251

[fol. 1125]

Item No.	Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup On Cost	Percent Trading Stamp Cost	Percent Net Markup
Ctn	Raleigh Cork Tip	2.34	2.136	9.551	3.30	6.251
Ctn	RaleightPlain	2.34	2.136	9.551	3.30	6.251

We, the undersigned, do certify that the action described in Sections A, B and C, above, was performed on April 17, 1954.

John Medlock, Jr.

J. A. MITCHELL
J. A. Mitchell

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REPORTER'S NOTE:

Attached is One-Hundred-Two (102) Green Stamps, and also attached is itemized cash register tape, imprinted at the top thereof, "MISKOVSKY FOODS, 23rd and Drexel, Okla. City, Okla., APR 16", totaling $10.61.

Calculation of Markup Percentages and S & H Green Trading Stamp Cost

GREENHAW'S MARKET #2, 6941 S E 29, Midwest City

A. The following items were purchased and paid for at prices shown as evidenced by an itemized cash register detail tape:

Item No	Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup On Cost	Percent Trading Stamp Cost	Percent Net Markup
1	40 oz Bisquick	.47¢	Not Calculated			
2	10# Gold Medal Flour	.99	.91	8.791	3.30	5.491
3	46 3/4 oz Tide	.73	.6790	7.510	3.30	4.210
4	18 oz Oxydol	.31	.2829	9.579	3.30	6.279
5	1# Cain's Coffee	1.08	1.015	6.404	3.30	3.104
6	1# Folger's	1.19	Not Calculated			
7	32 oz Miracle Whip	.55	.5083	8.204	3.30	4.904
8	Tall Milnot	3/29	.0896	7.924	3.30	4.624
9	Vigo Dog Food	.10	.0917	9.051	3.30	5.751
10	Eagle Brand Milk	.29	.2667	8.736	3.30	5.436
11	Tall Pet Milk	2/27	.1229	9.485	3.30	6.545
12	Pillsbury B'milk Biscuits	.13	Not Calculated			
13	1# Crisco	.33	.3025	9.091	3.30	5.791
14	Gerber's Baby Food	3/25	.0775	7.526	3.30	4.226
15	Jello	.08	.0729	9.739	3.30	6.439
16	Large Crystal White Soap	2/15	.07525	(.333)	3.30	(3.633)
17	Ctn Camels	2.32	2.119	9.486	3.30	6.186
		$9.53				
	Sales Tax	.14				
	Total Pur.	$9.67				

B. S & H Green Trading Stamps were received on the total purchase above, except on sales tax.

C. The following items of different brands or sizes of the above items were inspected as to price displayed:

Tall Can Carnation Milk	2/27	.1229	9.485	3.30	6.545
Small Milnot	6/29	.0448	7.891	3.30	4.591

[fol. 1127]

Item No.	Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Net Markup
	3# Crisco	.89¢	.8250¢	7.879%	3.30%	4.579
	12 oz Ivory Flakes	.31	.2829	9.579	3.30	6.279
	12 oz Ivory Snow	.31	.2829	9.579	3.30	6.279
	12 oz Lux Flakes	.31	.2829	9.579	3.30	6.279
	15 oz Dreft	.31	.2829	9.579	3.30	6.279
	18 oz Fab	.31	.2829	9.579	3.30	6.279
	47 oz Fab	.73	.6790	7.510	3.30	4.210
	18 oz Tide	.31	.2829	9.579	3.30	6.279
	21 oz Gnear	.31	.2829	9.579	3.30	6.279
	51 3/4 oz Cheer	.73	.6790	7.510	3.30	4.210
	15 oz Vel	.31	.2829	9.579	3.30	6.279
	18 oz Surf	.31	.2829	9.579	3.30	6.279
	6 oz Joy Liquid	.31	.2829	9.579	3.30	6.279
	Qt. Joy Liquid	.73	.6790	7.510	3.30	4.210
	46 3/4 oz Oxydol	.73	.6790	7.510	3.30	4.210
	19 oz Rinso	.31	.2829	9.579	3.30	6.279
	20½ oz Dua	.31	.2829	9.579	3.30	6.279
	Giant Dua	.73	.6790	7.510	3.30	4.210
	Large P & G Soap	2/15	.0723	3.73¼-	3.30	.43¼
	Ctn Chestorfield Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Lucky Strike Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Old Gold Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Kools	2.32	2.119	9.486	3.30	6.186
	Phillip Morris Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Fatima Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Herbert Tareyton	2.3¼	2.136	9.551	3.30	6.251

Item No.	Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup On Cost	Percent Trading Stamp Cost	Percent Net Markup
	Ctn Pall Mall	2.34	2.136	9.551	3.30	6.251
	Ctn Raleigh Cork Tip	2.34	2.136	9.551	3.30	6.251
	Ctn Raleigh Plain	2.34	2.136	9.551	3.30	6.251

We, the undersigned, do certify that the action described in Sections A, B and C, above, was performed on April 17, 1954.

JOHN McCLOUD, Jr.
John McCloud, Jr.

J. A. MITCHELL
J. A. Mitchell

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REPORTER'S NOTE:

Attached is Ninety-five (95) Green Stamps, and also attached is itemized cash register tape, imprinted at the top thereof, "GREENSHAW'S MARKET #2, MIDWEST CITY, APR 17", totaling $9.67.

Calculation of Markup Percentages and S & H Green Trading Stamp Cost

SCOTT'S, 25th and So. Central, Oklahoma City

A. The following items were purchased and paid for at prices shown as evidenced by an itemized cash register detail tape:

Item No.	Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Net Markup
1	3# Crisco	.89	.0285	7.879	3.30	4.579
2	Giant Dun	.73	.6790	7.510	3.30	4.210
3	4-1/2 oz. Gerber's Str. All Flavors Except Egg Yolk	3/25	.0775	7.526	3.30	4.226
4	5¢ Dr. Pepper	.22	.2025	8.641	3.30	5.341
5	Bottle Deposit	.12				
6	18 oz Oxydol	.31	.2829	9.579	3.30	6.279
7	Large Crystal White Soap	2/17	.0784	8.418	3.30	5.118
8	16 oz Van Camp Pork & Beans	2/23	.11375	1.099	3.30	(2.201)
9	8 oz Ballard Biscuits	.10	.0917	9.051	3.30	5.751
10	1# Cain's Coffee	1.08	1.015	6.404	3.30	3.104
11	2# Velveeta	.83	.78	6.410	3.30	3.110
12	Jello, All (4) Flavors	.09	Not calculated			
13	14-1/2 oz Milnot	3/29	.0896	7.924	3.30	4.624
14	Tall Carnation Milk	2/27	.1229	9.845	3.30	6.545
15	1# Folger's Reg & Drip	1.19	Not calculated			
16	32 oz Miracle Whip S.D.	.55	.5083	8.204	3.30	4.904
17	2-1/2 HyPower Jumbo Tamales	.33	Not calculated			
18	10# Gold Medal	.99	.91	8.791	3.30	5.491

Item No.	Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Net Markup
A. (Cont'd)						
19	8 oz Calumet Bkg Pdr	.12	.1096	9.489	3.30	6.189
20	2-1/2 oz Jello Lemon Pie Filling	.09	Not calculated			
21	1# Vigo (Horse & Beef)	.10	.0917	9.051	3.30	5.751
22	12 oz Treet	.47	.4442	5.808	3.30	2.508
23	Ctn Pall Mall	2.34	2.136	9.551	3.30	6.251
		$11.76				
	Sales Tax	.19				
	Total Pur.	$11.95				

B. S & H Green Trading Stamps were received on the total purchase above, except on sales tax.

C. The following items of different brands or sizes of the above items were inspected as to price displayed:

Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Net Markup
5¢ Coca-Cola	.22	.2025	8.641	3.30	5.341
5¢ Seven-Up	.22	.2025	8.641	3.30	5.341
8 oz Pillsbury Buttermilk Biscuits	.10	.0917	9.051	3.30	5.751
2# Velveeta Pimento	.83	.78	6.410	3.30	3.110
5# Gold Medal Flour	.52	.474	9.704	3.30	6.404
Tall Pet Milk	2/27	.1229	9.845	3.30	6.545
Small Milnot	6/29	.0448	7.891	3.30	4.591
1# Crisco	.33	.3025	9.091	3.30	5.791
3# Spry	.89	.8250	7.879	3.30	4.579
12 oz Ivory Flakes	.31	.2829	9.579	3.30	6.279
12 oz Ivory Snow	.31	.2829	9.579	3.30	6.279

Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Net Markup
12 oz Lux Flakes	.31	.2829	9.579	3.30	6.279
15 oz Dreft	.31	.2829	9.579	3.30	6.279
18 oz Fab	.31	.2829	9.579	3.30	6.279
47 oz Fab	.73	.6790	7.510	3.30	4.210
18 oz Tide	.31	.2829	9.579	3.30	6.279
46-3/4 oz Tide	.73	..6790	7.510	3.30	4.210
21 oz Cheer	.31	.2829	9.579	3.30	6.279
51-3/4 oz Cheer	.73	.6790	7.510	3.30	4.210
15 oz Vel	.31	.2829	9.579	3.30	6.279
18 oz Surf	.31	.2829	9.579	3.30	6.279
6 oz Joy Liquid	.31	.2829	9.579	3.30	6.279
46-3/5 oz Oxydol	.73	.6790	7.510	3.30	4.210
19 oz Rinso	.31	.2829	9.579	3.30	6.279
20-1/2 oz Dua	.31	.2829	9.579	3.30	6.279
Ctn Camels Reg	2.32	2.119	9.486	3.30	6.186
Ctn Chesterfield Reg	2.32	2.119	9.486	3.30	6.186
Ctn Lucky Strike Reg	2.32	2.119	9.486	3.30	6.186
Ctn Old Gold	2.32	2.119	9.486	3.30	6.186
Ctn Kools	2.32	2.119	9.486	3.30	6.186
Ctn Phillip Morris	2.32	2.119	9.486	3.30	6.186
Ctn Fatima	2.32	2.119	9.486	3.30	6.186
Ctn Herb. Tareyton	2.34	2.136	9.551	3.30	6.251
Ctn Raleigh Cork Tip	2.34	2.136	9.551	3.30	6.251
Ctn Raleigh Plain	2.34	2.136	9.551	3.30	6.251

We, the undersigned, do certify that the action described in Sections A, B, and C, above, was performed on April 17, 1954.

John McCloud, Jr.

J. A. MITCHELL
J. A. Mitchell

REPORTER'S NOTE:

Attached is One-Hundred-Seventeen (117) Green Stamps, and also attached is itemized cash register tape, imprinted at the top thereof, "SCOTT'S THRIFT-T-WISE FOOD MART, 25th and South Central, APR 17", and totaling $11.95. Also imprinted at bottom of said cash register tape appears the words, "WE GIVE S & H GREEN STAMPS".

[fol. 1133]

Calculation of Markup Percentages and S & H Green Trading Stamp Cost

SCOTT'S FOOD MART, INC., 3740 N W 10th, Oklahoma City.

A. The following items were purchased and paid for at prices shown as evidenced by an itemized cash register detail tape:

Item No.	Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Net Markup
1	40 oz Bisquick	.42¢	.3889¢	7.997%	3.30%	4.697%
2	Qt Liquid Joy	.71	.655	8.397	3.30	5.097
3	Jello	.08	.0729	9.739	3.30	6.439
4	3# Crisco	.89	.8250	7.879	3.30	4.579
5	1# Folger's Coffee	1.19	Not Calculated			
6	Tall Can Carnation Milk	2/27	.1229	9.816	3.30	6.516
7	32 oz Miracle Whip	.55	.5083	8.204	3.30	4.904
8	2# Velveeta	.83	.78	6.410	3.30	3.110
9	4½ oz Gerber's Baby Food	3/25	.0775	7.526	3.30	4.226
10	12 oz Kor	.45	.4196	7.215	3.30	3.915
11	12 oz Peter Pan Peanut Btr.	.33	.3021	9.235	3.30	5.935
12	1# Cain's Coffee	1.08	1.015	6.404	3.30	3.104
13	Ballard Biscuits	.10	.0917	9.051	3.30	5.751
14	Vigo Dog Food	.10	.0917	9.051	3.30	5.751
15	Dtn Camels	2.32	2.119	9.486	3.30	6.186
		$9.57				
	Sales Tax	.14				
	Total Pur.	$9.71				

B. S & H Green Trading Stamps were received on the total purchase above, except on sales tax.

C. The following items of different brands or sizes of the above items were inspected as to price displayed:

	Pillsbury B'milk Biscuits	.10	.0917	9.056	3.30	5.751
-	2# Velveeta Pimento	.83	.78	6.410	3.30	3.110
	Tall Pet Milk	2.27	.1229	9.816	3.30	6.516

Item No.	Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Net Markup
	3# Spry	.89¢	.8250¢	7.879%	3.30%	4.579%
	12 oz Ivory Flakes	.31	.2829	9.579	3.30	6.279
	12 oz Ivory Snow	.31	.2829	9.579	3.30	6.279
	12 oz Lux Flakes	.31	.2829	9.579	3.30	6.279
	15 oz Dreft	.31	.2829	9.579	3.30	6.279
	18 oz Fab	.31	.2829	9.579	3.30	6.279
	47 oz Fab	.73	.6790	7.510	3.30	4.210
	18 oz Tide	.31	.2829	9.579	3.30	6.279
	46 3/4 oz Tide	.73	.6790	7.510	3.30	4.210
	21 oz Cheer	.31	.2829	9.579	3.30	6.279
	51 3/4 oz Cheer	.73	.6790	7.510	3.30	4.210
	15 oz Vel	.31	.2829	9.579	3.30	6.279
	18 oz Surf	.31	.2829	9.579	3.30	6.279
	6 oz Joy Liquid	.31	.2829	9.579	3.30	6.279
	46 3/4 oz Oxydol	.73	.6790	7.510	3.30	4.210
	18 oz Oxydol	.31	.2829	9.579	3.30	6.279
	19 oz Rinso	.31	.2829	9.579	3.30	6.279
	20½ oz Dun	.31	.2829	9.579	3.30	6.279
	Giant Dun	.72	.6790	7.510	3.30	4.210
	Ctn Chesterfields Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Lucky Strike Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Old Gold Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Cools Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Phillip Morris Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Fatima Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Herbert Tareyton	2.34	2.136	9.551	3.30	6.251
	Ctn Pall Mall	2.34	2.136	9.551	3.30	6.251
	Ctn Raleigh Cork Tip	2.34	2.136	9.551	3.30	6.251
	Ctn Raleigh Plain	2.34	2.136	9.551	3.30	6.251

We, the undersigned, do certify that the action described in Sections A, B, and C, above, were performed on April 17, 1954.

JOHN McCLOUD, JR.,
John McCloud, Jr.

J. A. MITCHELL
J. A. Mitchell

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REPORTER'S NOTE:

Attached is Ninety-five (95) Green Stamps, and also attached cash register tape, imprinted at the top thereof, SCOTT'S FOOD MART, INC., No. 2, 3940 N.W. 10th, APR 17th, itemized, totaling $9.71.

586
[fol. 1136]

Calculation of Markup Percentages and S & H Green Trading Stamp Cost

THRIF-T-WISE #3, 4901 N May, Oklahoma City

A. The following items were purchased and paid for at prices shown as evidenced by an itemized cash register detail tape:

Item No.	Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Net Markup
1	Ctn Seven-Up	.22¢	.2025¢	8.641%	3.30%	5.341
2	Bottle Deposit on 7Up	.12				
3	47 oz Fab	.73	.6790	7.510	3.30	4.210
4	1# Cain's Coffee	1.08	1.015	6.404	3.30	3.104
5	Jello	.08	.0729	9.379	3.30	6.439
6	4½ oz Gerber's Baby Food	3/25	.0775	7.526	3.30	4.226
7	15 oz Dreft	.31	.2829	9.579	3.3-	6.279
8	1# Maxwell House Coffee	1.19	Not Calculated			
9	32 oz Miracle Whip	.55	.5083	8.204	3.30	4.904
10	Tall Milnot	3/29	.0896	7.924	3.30	4.624
11	Tall Pet Milk	2/27	.1229	9.845	3.30	6.545
12	16 oz Eagle Brand Milk	.29	.2667	8.736	3.30	5.436
13	Large P & G Soap	2/15	.0723	3.743	3.30	.435
14	12 oz Treat	.47	.4442	5.808	3.30	2.508
15	40 oz Bisquick	.47	Special Shel Tag Gave Price 42¢-			
16	3# Crisco	.89	.8250	7.879	3.30	4.579
17	15¢ Prince Albert Toco.	.14	.1283	9.119	3.30	5.819
18	Ctn Chesterfields Reg	2.32	2.119	9.486	3.30	6.186
		$9.82				
	Sales Tax	.14				
	Total Pur	$9.96				

B. S & H Green Trading Stamps were received on the total purchase above, except on sales tax.

[fol. 1137]

C. The following items of different brands or sizes of the above items were inspected as to price displayed:

Item No.	Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Net Markup
	4½ oz Heinz Baby Food	3/25	.0775	7.526	3.30	4.226
	Ctn Coca Cola	.22	.2025	8.641	3.30	5.341
	Ctn Dr. Pepper	.22	.2025	8.641	3.30	5.341
	Jello Pudding	.08	.0729	9.739	3.30	6.439
	Jello Pie Filling Lemon	.08	.0729	9.739	3.30	6.439
	Jello Coconut Pie Fil	.08	.0729	9.739	3.30	6.439
	40 oz Bisquick	.42	.3889	7.997	3.30	4.697
	Tall Can Carnation Milk	2/27	.1229	9.845	3.30	6.545
	Small Kilnet	2/29	.0648	7.891	3.30	4.591
	1# Crisco	.33	.3025	9.091	3.30	5.791
	3# Spry	.89	.8250	7.879	3.30	4.579
	12 oz Ivory Flakes	.31	.2829	9.579	3.30	6.279
	12 oz Ivory Snow	.31	.2829	9.579	3.30	6.279
	12 oz Lux Flakes	.31	.2829	9.579	3.30	6.279
	18 oz Fab	.31	.2829	9.579	3.30	6.279
	18 oz Tide	.31	.2829	9.579	3.30	6.279
	46 3/4 oz Tide	.73	.6790	7.510	3.30	4.210
	21 oz Cheer	.31	.2829	9.579	3.30	6.279
	51 3/4 oz Cheer	.73	.6790	7.510	3.30	4.210
	15 oz Vel	.31	.2829	9.579	3.30	6.279
	18 oz Surf	.31	.2829	9.579	3.30	6.279
	6 oz Liquid Joy	.31	.2829	9.579	3.30	6.279
	At Liquid Joy	.73	.6790	7.510	3.30	4.210
	46 3/5 oz Cxydol	.73	.6790	7.510	3.30	4.210
	13 oz Cxydol	.31	.2829	9.579	3.30	6.279

Item No.	Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Markup (Net)
	19 oz Rinso	.31¢	.2829¢	9.579	3.30	6.279
	20½ oz Duz	.31	.2829	9.579	3.30	6.279
	Giant Dua	.73	.6790	7.510	3.30	4.210
	Ctn Camels Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Lucky Strike Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Old Gold Reg	2.32	2.119	9.486	3.30	6.186
	Ctn Kools Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Phillip Morris	2.32	2.119	9.486	3.30	6.186
	Ctn Fatima Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Herbert Tareyton	2.34	2.136	9.551	3.30	6.251
	Ctn Pall Mall	2.34	2.136	9.551	3.30	6.251
	Ctn Raleigh Cork Tip	2.34	2.136	9.551	3.30	6.251
	Ctn Raleigh Plain	2.34	2.136	9.551	3.30	6.251
	15¢ Velvet	.14	.1283	9.119	3.30	5.819
	15¢ Half & Half	.14	.1283	9.119	3.30	5.819
	10¢ Eagler	.10	.0925	8.108	3.30	4.808
	5¢ Bull Durham	.05	.4685	8.108	3.30	4.808
	10¢ Country Gentleman	.10	.0925	8.108	3.30	4.808
	10¢ Geo. Washington	.10	.0925	8.108	3.30	4.808
	10¢ Granger Rough Cut	.10	.0925	8.108	3.30	4.808

We, the undersigned, do certify that the action described in Sections A, B and C, above, was performed on April 17, 1954.

JOHN McCLOUD, JR.
John McCloud, Jr.

J. A. MITCHELL
J. A. Mitchell

REPORTER'S NOTE: Attached is Ninety-eight (98) Green Stamps, and also attached is [illegible] register tape, imprinted at the top thereof, "THRIFT-T-WISE SUPER MARKET, 4901 N. Hwy, APR 17", totaling $9.96.

[fol. 1139]

Calculation of Markup Percentages and S & H Green Trading Stamp Cost

LAKESIDE SUPER MARKET #2, 7305 N. Western, Oklahoma City

A. The following items were purchased and paid for at prices shown as evidenced by an itemized cash register detail tape:

Item No.	Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Net Markup
1	2# Velveeta	.83¢	.78¢	6.410%	3.30%	3.110%
2.	46 3/4 oz Tide	.73	.6792	7.510	3.30	4.210
3.	32 oz Miracle Whip	.55	.5083	8.204	3.30	4.904
4	40 oz Bisquick	.42	.3889	7.997	3.30	4.697
5	HyPower Jumbo Tamales	.33	Not Calculated			
6	12 oz Treet	.47	.4442	5.808	3.30	2.508
7	Tall Milnot	3/29	.0896	7.924	3.30	4.624
8	Campbell's Tomato Soup	2/23	.1052	9.316	3.30	6.016
9	16 oz Eagle Brand	.29	.2667	8.736	3.30	5.436
10	Tall Can Carnation Milk	2/27	.1229	9.845	3.30	6.545
11	Jello Lemon Pie Filling	.08	.0729	9.739	3.30	6.439
12	8 oz Calumet Baking Powder	.12	.1096	9.489	3.30	6.189
13	3# Crisco	.89	.8250	7.879	3.30	5.791
14	1# Cain's Coffee	1.08	1.015	6.408	3.30	3.104
15	5# Gold Medal Flour	.52	.474	9.704	3.30	6.404
16	20½ oz Dus	.31	.2829	9.579	3.30	6.279
17	1# Folger's	1.19	Not Calculated			
18	4½ oz Gerber's Baby Food	3/25	.0775	7.526	3.30	4.226
19	Jello	.08	.0729	9.739	3.30	6.439
20	Ctn Cannels Reg.	2.32	2.119	9.486	3.30	6.186
		$11.25				
	Sales Tax	.18				
	Total Purchases	$11.43				

These prices were checked and also prevail at LAKESIDE #1, 7531 N May, Oklahoma City.

B. S & H Green Trading Stamps were received on the total purchase above, except for sales tax.

C. The following items of different brands or sizes of the above items were inspected as to price displayed.

The following items were checked and also prevail at LAKESIDE #1, 7531 N May, Oklahoma City.

Item No.	Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Net Markup
	2# Velveeta Pimento	.83¢	.78¢	6.410%	3.30%	3.110%
	1# Maxwell House Coffee	1.19	Not Calculated			
	2# Folger's Coffee	2.36	Not Calculated			
	Jello Pudding	.08	.0729	9.739	3.30	6.439
	Jello Coconut Pie Fil	.08	.0729	9.739	3.30	6.439
	1# Crisco	.33	.3025	9.091	3.30	5.791
	3# Spry	.89	.8250	7.879	3.30	4.579
	12 oz Ivory Flakes	.31	.2829	9.579	3.30	6.279
	12 oz Ivory Snow	.31	.2829	9.579	3.30	6.279
	12 oz Lux Flakes	.31	.2829	9.579	3.30	6.279
	15 oz Dreft	.31	.2829	9.579	3.30	6.279
	18 oz Fab	.31	.2829	9.579	3.30	6.279
	47 oz Fab	.73	.6790	7.520	3.30	4.210
	18 oz Tide	.31	.2829	9.579	3.30	6.279
	46 3/4 oz Tide	.73	.6790	7.520	3.30	5.210
	21 oz Cheer	.31	.2829	9.579	3.30	6.279
	51 3/4 oz Cheer	.73	.6790	7.520	3.30	4.210
	15 oz Vel	.31	.2829	9.579	3.30	6.279
	18 oz Surf	.31	.2829	0.579	3.30	6.279
	6 oz Liquid Joy	.31	.2829	9.579	3.30	6.279
	Qt Liquid Joy	.73	.6790	7.520	3.30	4.210

Item No.	Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Net Markup
	46 3/4 oz Oxydol	.73¢	.6790¢	7.510%	3.30%	4.210%
	18 oz Oxydol	.31	.2829	9.579	3.30	6.279
	19 oz Rinso	.31	.2829	9.579	3.30	6.279
	Giant Dux	.73	.6790	7.510	3.30	4.210
	Ctn Chesterfields Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Lucky Strike Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Old Gold	2.32	2.119	9.486	3.30	6.186
	Ctn Kools Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Phillip Morris Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Fatima Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Herbert Tareyton	2.34	2.136	9.551	3.30	6.251
	Ctn Pall Mall	2.34	2.136	9.551	3.30	6.251
	Ctn Raleigh Cork Tip	2.34	2.136	9.551	3.30	6.251
	Ctn Raleigh Plain	2.34	2.136	9.551	3.30	6.251

We, the undersigned, do certify that the action described in Sections A, B, and C, above, was performed on April 17, 1954.

JOHN McCLOUD, JR.
John McCloud, Jr.

J. A. MITCHELL
J. A. Mitchell

Page 3.

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REPORTER'S NOTE:

Attached is One-Hundred-Twelve (112) Green Stamps, and also attached is itemized cash register tape, imprinted at the top thereof, "LAKESIDE SUPER MARKET NO. 2, 7305 N. Western, APR 17", totaling $11.43

Calculation of Markup Percentages and S & H Green Trading Stamp Cost

THRIF-T-WISE #9, 4905 No. McArthur, Oklahoma City.

A. The following items were purchased and paid for at prices shown as evidenced by an itemized cash register detail tape:

Item No.	Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Net Markup
1	3# Crisco	.88¢	.8250¢	6.66%	3.30%	3.367%
2	1# Cains Coffee	1.08	1.015	6.404	3.30	3.104
3	Peter Pan Peanut Butter	.33	.3021	9.235	3.30	5.935
4	1# Folger's Coffee	1.19	Not Calculated			
5	12 oz Wrest	.45	.4442	1.306	3.30	(1.994)
6	Large P & G Soap	2/17	Not Calculated			
7	Griffin Waffle Syrup	.37	.3375	9.630	3.30	6.330
8	40 oz Bisquick	.42	.3889	7.997	3.30	4.697
9	Eagle Brand	.29	.2667	8.736	3.30	5.436
10	Calumet Baking Powder	.12	.1096	9.489	3.30	6.189
11	5# Gold Medal Flour	.52	.474	9.704	3.30	6.404
12	Jello	.08	.0729	9.739	3.30	6.439
13	6 oz Liquid Joy	.29	.2729	6.266	3.30	2.966
14	32 oz Miracle Whip	.55	.5083	8.204	3.30	4.904
15	Gerber's Baby Food	3/25	.0775	7.526	3.30	4.226
16	HyPower Jumbo Tamales	.33	Not Calculated			
17	Betty Crocker G'Bread Mix	.25	.2292	9.075	3.30	5.775
18	Ctn Coca Cola	.25	Not Calculated			
19	Tall Carnation Milk	2/27	.1229	9.845	3.30	6.545
20	Tall Milnot	3/29	.0896	7.924	3.30	4.624
21	Van Camp Pork & Beans	2/25	.11375	9.890	3.30	6.590
22	Bottle Deposit on Cokes	.12				
23	Ctn Camels Reg.	2.33	2.119	9.958	3.30	6.658
		$11.08				
	Sales Tax	.18				
	Total Pur.	$11.26				

[fol. 1143]

Item #7 on Page One was overcharged 1¢ and rung up as .38¢, and, when this was questioned by us, the cashier gave credit by ringing up item #8 at 41¢ instead of 42¢.

B. S & H Green Trading Stamps were received on the total purchase above, except on sales tax.

C. The following items of different brands or sizes of the above items were inspected as to price displayed:

Item No.	Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Net Markup
	Jello Pudding	.08¢	.0729¢	9.739%	3.30%	6.439%
	Jello Lemon Pie Filling	.08	.0729	9.739	3.30	6.439
	Jello Cocoanut " "	.08	.0729	9.739	3.30	6.439
	12 oz Mor	.45	.4196	7.254	3.30	3.945
	Tall Pet Milk	2/27	.1229	9.845	3.30	6.516
	1# Crisco	.33	.3025	9.091	3.30	5.791
	3# Spry	.89	.8250	7.879	3.30	4.579
	12 oz Ivory Flakes	.31	.2829	9.579	3.30	6.279
	12 oz Ivory Snow	.31	.2829	9.579	3.30	6.279
	12 oz Lux Flakes	.31	.2829	9.579	3.30	6.279
	15 oz Dréft	.31	.2829	9.579	3.30	6.279
	18 oz Fab	.31	.2829	9.579	3.30	6.279
	47 oz Fab	.73	.6790	7.510	3.30	4.210
	18 oz Tide	.31	.2829	9.579	3.30	6.279
	46 3/4 oz Tide	.73	.6790	7.510	3.30	4.210
	21 oz Cheer	.31	.2829	9.579	3.30	6.279
	51 3/4 oz Cheer	.73	.6790	7.510	3.30	4.210
	15 oz Vel	.31	.2829	9.579	3.30	6.279
	18 oz Surf	.31	.2829	9.579	3.30	6.279
	Qt Liquid Joy	.71	.6550	8.397	3.30	5.097

Item No.	Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Net Markup
	46 3/5 oz Oxydol	.73¢	.6790¢	7.510%	3.30%	4.210%
	18 oz Oxydol	.31	.2829	9.579	3.30	6.279
	19 oz Rinso	.31	.2829	9.579	3.30	6.279
	20½ oz Duz	.31	.2829	9.579	3.30	6.279
	Giant Duz	.73	.3790	7.510	3.30	4.210
	Ctn Chesterfields	2.32	2.119	9.486	3.30	6.186
	Ctn Lucky Strike Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Old Golds Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Kools Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Phillip Morris Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Fatima Reg.	2.32	2.119	9.486	3.30	6.186
	Ctn Herbert Tareyton	2.34	2.136	9.551	3.30	6.251
	Ctn Pall Mall	2.34	2.136	9.551	3.30	6.251
	Ctn Raleigh Cork Tip	2.34	2.136	9.551	3.30	6.251
	Ctn Raleigh Plain	2.34	2.136	9.551	3.30	6.251

We, the undersigned, do certify that the action described in Sections A, B, and C, above, was performed on April 17, 1954.

JOHN McCLOUD, JR.
John McCloud, Jr.

J. A. MITCHELL
J. A. Mitchell

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REPORTER'S NOTE:

Attached is One-Hundred-Twelve (112) Green Stamps, and also attached is itemized cash register tape, imprinted at the top thereof, "J. MEIRD DBA GROCERY, APR 17", totaling $11.26.

[fol. 1145]

Calculation of Markup Percentages and S & H Green Trading Stamp Cost

CORSIN'S, 1727 N.W. 16th, Oklahoma City

A. The following items were purchased and paid for at prices shown as evidenced by an itemized cash register detail tape.

Item No.	Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Net Markup
1	Tall Milnot	3/29¢	.08964	7.921%	3.30%	4.621%
2	Tall Can Carnation Milk	2/27	.1229	9.845	3.30	6.545
3	Quart Miracle Whip	.55	.5083	8.204	3.30	4.904
4	10# Gold Medal Flour	.99	.91	8.791	3.30	5.491
5	47 oz Fab	.73	.6790	7.510	3.30	4.210
6	1# Cain's Coffee	1.09	1.015	7.389	3.30	4.089
7	20¢ oz Dux	.31	.2829	9.579	3.30	6.279
8	Large Crystal White Soap	2/15	.07525	(.3%)	3.30	(3.6%)
9	Ctn Chesterfields Reg.	2.32	2.119	9.486	3.30	6.186
10	Jello Pie Filling Lemon	.08	.0729	9.739	3.30	6.439
11	4½ oz Gerber's Baby Food	3/25	.0775	7.526	3.30	4.225
12	Jello, All Flavors	.08	.0729	9.729	3.30	6.439
		$7.10				
	Sales Tax	9				
	Total Pur.	$7.19				

B. S & H Green Trading Stamps were received on the total purchase above, except on sales tax.

C. The following items of different brands or sizes of the above items were inspected as to price displayed:

3½ Jello Coconut Pie Fil	.08	.0729	9.739	3.30	6.439
Jello Pudding	.08	.0729	9.739	3.30	6.439
Tall Can Pet Milk	2.27	.1229	9.845	3.30	6.545
12 oz Ivory Flakes	.31	.2829	9.579	3.30	6.279
12 oz Ivory Snow	.30	.2729	9.930	3.30	6.630

Item No.	Item Description	Retail Selling Price Each	Probable Cost Each	Percent Markup on Cost	Percent Trading Stamp Cost	Percent Net Markup
	12 oz Lux Flakes	.31¢	.2829¢	9.579%	3.30%	6,279%
	15 oz Draft	.31	.2829	9.579	3.30	6.279
	18 oz Fab	.31	.2829	9.579	3.30	6.279
	18 oz Tide	.31	.2829	9.579	3.30	6.279
	46 3/4 oz Tide	.73	.6790	7.510	3.30	4.210
	21 oz Cheer	.31	.2829	9.579	3.30	6.279
	51 3/4 oz Cheer	.73	.6790	7.510	3.30	4.210
	15 oz Vel	.31	.2829	9.579	3.30	6.279
	18 oz Surf	.31	.2829	9.579	3.30	6.279
	6 oz Liquid Joy	.30	.2729	9.930	3.30	6.630
	Qt Liquid Joy	.73	.6790	7.510	3.30	4.210
	18 oz Oxydol	.31	.2829	9.579	3.30	6.279
	Large P & G Soap	2/15	.0723	3.73¼	3.30	.43¼
	Ctn Camels Reg	2.32	2.119	9.486	3.30	6.186
	" Lucky Strike Reg.	2.32	2.119	9.486	3.30	6.186
	" Old Gold Reg	2.32	2.119	9.486	3.30	6.186
	" Kools Reg	2.32	2.119	9.486	3.30	6.186
	" Phillip Morris Reg	2.32	2.119	9.486	3.30	6.186
	" Fatima	2.32	2.119	9.486	3.30	6.186
	" Herbert Tareyton	2.34	2.136	9.551	3.30	6.251
	" Pall Mall	2.34	2.136	9.551	3.30	6.251
	" Raleigh Cork Tip	2.34	2.136	9.551	3.30	6.251
	" Raleigh Plain	2.34	2.136	9.551	3.30	6.251

We, the undersigned, do certify that the action described in Sections A, B, and C above was performed on April 16, 1954.

JOHN McCLOUD, JR.
John McCloud, Jr.

J. A. MITCHELL
J. A. Mitchell

REPORTER'S NOTE:

Attached is Seventy-one (71) Green Stamps, and also attached is itemized cash register tape, imprinted at top thereof, "CORSIN'S GROCERY, APR 17", totaling $7.19.

[fol. 1147]

DEFENDANT'S EXHIBIT 19

Calculation of Markup Percentages and S & H Green Trading Stamp Cost

JORSIN'S 1727 N. W. 16th Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices shown as evidenced by an itemized cash register detail tape:

Item No	Description of Item	Retail Selling Price Each	Probable Cost Each	Probable Percent Markup On Cost	Net Retail after Deducting 5.6% For Trad. Stamp	Probable Net Percent Markup
1.	*24's Bayer Aspirin	.21	.1421	47.78	.1982	39.48
2.	*Big Colgate Tooth Paste	.27	18	50.00	.2549	41.61
3.	3/ Crisco	.95	.8839	7.48	.8968	1.46
4.	*16 oz Real Kill Insecticide	.69	.4166	65.62	.6514	56.36
5.	10# C&H Sugar, or Imperial	1.00	.9330	7.14	.9440	1.18
6.	Tall Hilnot	3/.29	.0896	7.88	3/.2737	1.82
7.	Qt Tide	.73	.6794	7.44	.6891	1.43
8.	1# Cain's Coffee	1.13	1.065	6.10	1.0667	.16
9.	4½ oz Gerbers Str Baby Food	3/.30	Not computed			

* Fair Trade Items

B. 55 S & H Green Trading Stamps were received on total purchases, except Sales Tax.

C. These items were checked for Shel Price, and the Price and Markup Calculations are as follows:

Qt Oxydol	.73	.6794	7.44	.6891	1.43
Qt Fab	.73	.6794	7.44	.6891	1.43
Qt Joy	.73	.6794	7.44	.6891	1.43
Qt Cheer	.73	.6794	7.44	.6891	1.43

We, the Undersigned, do certify that the action described in Sections A, B and C above were performed on July 15, 1954.

JOHN MacCLOUD

J. A. MITCHELL

55 Green Trading Stamps - Received From:

CORSIN'S GROCERY, 1727 N.W. 16th, Oklahoma City, Oklahoma

REPORTER'S NOTE:

Attached to the original Exhibit on this page, is a cash register tape, as follows:

CORSIN'S
GROCERY

JUL 15 1399

$ 1	0.21
$ 2	0.27
$ 3	0.95
$ 4	0.69
$ 5	1.00
$ 6	0.29
$ 7	0.73
$ 8	1.13
$ 9	0.30
#3	5.57 TL
Tax	.11
	5.68

Home-Owned

and also attached is 55 Green Trading Stamps, bearing the insigna "KVT CO-OPERATIVE 539"

[fol. 1149]

Calculation of Markup Percentages and S & H Green Trading Stamp Cost

Louis J. Speed's Food Market 1218 N. Pennsylvania Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices shown as evidenced by an itemized cash register detail tape:

Item No.	Description of Item	Retail Selling Price Each	Probable Cost Each	Probable Percent Markup On Cost	Net Retail After Deducting 5.6% For Prem. Stamp	Probable Net Percent Markup
1.	Qt Tide	.73	.6794	7.44	.6891	1.43
2.	3# Crisco	.95	.8839	7.48	.8968	1.46
3.	1# Cain's Coffee	1.13	1.065	6.10	1.0667	.16
4.	16 oz Kraft Cheese Whiz	.49	.4542	7.88	.4626	1.85
5.	*16 oz Real Kill Insecticide	.69	.4166	65.62	.6514	56.36
6.	4½ oz Gerbers Str Baby Food	3/.25	.0777	7.25	3/.2360	1.22
7.	*24's Bayer Aspirin	.25	.1421	Not computed		
8.	*1g Colgate Tooth Paste	.27	.18	50.00	.2549	41.61
9.	Tall Milnot	3/.29	.0896	7.88	3/.2737	1.82

* Fair Trade Items

B. 50 S & H Green Trading Stamps were received on total purchase, except for Sales Tax.

C. The following items were checked for Shelf Price, and the Price and Markup calculations are as follows:

Qt Cxydol	.73	.6794	7.44	.6891	1.43
Qt Joy	.73	.6794	7.44	.6891	1.43
Qt Cheer	.73	.6794	7.44	.6891	1.43
Qt Fab	.73	.6794	7.44	.6891	1.43

We, the Undersigned, do hereby certify that the action described in Sections A, B, and C above were performed on July 15, 1954.

JOHN McCLOUD

J. A. MITCHELL

50 S&H Green Trading Stamps Received From:

Speed's Food Market, 1218 N. Pennsylvania, Oklahoma City, Okla.

REPORTER'S NOTE:

Attached to the original Exhibit on this page, is a cash register tape, as follows:

SPEED'S
SUPER
FOOD MKT.
No. 3

JUL 15 260

$1 0.73 Gr A
$2 0.95 Gr A
$3 1.13 Gr A
$4 0.49 Gr A
$5 0.69 Gr A
$6 0.25 Gr A
$7 0.25 Gr A
$8 0.27 Gr A
$9 0.29 Gr A

$ 0.10 Tx A

$ 5.15 TL A

TOTAL SHOWN
ABOVE

and also attached is 50 Green Trading Stamps, bearing the insigna "IDJ - Co-OPERATIVE - 893"

[fol. 1151]

Calculation of Markup Percentages and S & H Green Trading Stamp Cost

LAKESIDE #2 — 7306 N. Western — Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices shown as evidenced by an itemized cash register detail tape:

Item No.	Description of Item	Retail Selling Price Each	Probable Cost Each	Probable Percent Markup on Cost	Net Retail After Deducting 5.6% For Premium Stamp.	Probable Net Percent Markup
1.	Tall Milnot	3/.29	.0896	7.88	3/.2737	1.82
2.	1# Cain's Coffee	1.13	1.065	(6.10)	1.0667	.16
3.	10# C&H, Imperial Sugar	1.00	.9330	7.14	.9440	1.18
4.	3# Crisco	.95	.8839	7.48	.8968	1.46
5.	Qt Tide	.73	.6794	7.44	.6891	1.43
6.	4½ oz Gerbers Str Baby Food	3/.25	.0777	7.25	3/.2360	1.22
7.	16 oz Real Kill Insecticide	.69	.4166	65.62	.6514	56.36
8.	12 oz Niblets Corn	.17	.1573	8.07	.1605	2.02
9.	#24's Bayer Aspirin	.21	.1421	47.78	.1982	39.48
10	#1g Colgate Tooth Paste	.27	.18	50.00	.2549	41.61
11.	2# Kraft Velveeta Cheese	.79	.7802	(1.02)	.7458	(4.41)

* - Fair Trade Items
( ) Loss

B. 64 S&H Green Trading Stamps were received on total purchase, except for Sales Tax.

C. The following items were checked for Shelf Price, and the Price and Markup Calculations are as follows:

Qt Candol	.73	.6794	7.44	.6891	1.43
Qt Wab	.73	.6794	7.44	.6891	1.43
Qt Shear	.73	.6794	7.44	.6891	1.43
Qt Joy	.73	.6794	7.44	.6891	1.43

We, the Undersigned, do certify that the action described in Sections A, B, and C above were performed on July 15, 1954.

JOHN McCLOUD

J. A. MITCHELL

64 S&H Green Trading Stamps Received From

LAKESIDE #2 7306 N. Western, Oklahoma City, Oklahoma.

REPORTER'S NOTE:

Attached to the original Exhibit on this page, is a cash register tape, as follows:

LAKESIDE
SUPER MARKET
No. 2

JUL 15 2364

$ 1	0.29	Gr B
$ 2	1.13	Gr B
$ 3	1.00	Gr B
$ 4	0.95	Gr B
$ 5	0.73	Gr B
$ 6	0.25	Gr B
$ 7	0.69	Gr B
$ 8	0.17	Gr B
$ 9	0.21	Gr B
$ 10	0.27	Gr B
$ 11	0.79	Gr B
$	0.13	Tx B
$	6.61	TL B

THANK YOU
CALL AGAIN

and also attached is 64 Green Trading Stamps, bearing the insigna "KVT - CO-OPERATIVE - SHOP".

[fol. 1153]

Calculation of Markup Percentages and S & H Green Trading Stamp Cost

THRIF-T-WISE 4205 N. McArthur Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices shown as evidenced by an itemized cash register detail tape:

Item No.	Description of Item	Retail Selling Price Each	Probable Cost Each	Probable Percent Markup On Cost	Net Retail After Deducting 5.6% For Premium Stamp	Probable Net Percent Markup
1.	*16 oz Real Kill Insecticide	.69	.4166	65.62	.6514	56.36
2.	Qt Oxydol	.73	.6794	7.44	.6891	1.43
3.	10# C&H Sugar	1.00	.9330	7.14	.9440	1.18
4.	1# Cain's Coffee	1.13	1.065	6.10	1.0667	.16
5.	Tall Milnot	3/.29	.0896	7.88	3/.2737	1.82
6.	2# Kraft Velveeta Cheese	.83	.7802	6.13	.7835	.42
7.	3# Crisco	.93	.8839	5.21	.8779	(.68)
8.	Qt Miracle Whip	.54	.5217	3.51	.5380	3.22
9.	12 oz Niblets Corn	.17	.1573	8.07	.1605	2.02
10.	Qt Joy	.71	.6794	4.50	.6702	(1.35)
11.	* 24's Bayer Aspirin	.21	.1421	47.78	.1982	39.48
12	4½ oz Gerber Str Baby Food	3/.25	.0777	7.25	3/.2360	1.22
13	*Lg Colgate Tooth Paste	.27	.18	50.00	.2549	41.61
14.	16 oz Kraft Cheese Whiz	.49	.4542	7.88	.4626	1.85
15.	#2 Libby Sliced Pineapple	.29	.2683	8.08	.2738	2.05

* Fair Trade Items

( ) Loss

B. 85 S&H Green Trading Stamps were received on total purchase except for Sales Tax.

THRIF-T-WISE ^{m}) 4205 N. McArthur Oklahoma City, Page 2

C. These items were checked for Shelf Price and the Price and Markup Calculations are as follows:

Item N No.	Description of Item	Retail Selling Price Each	Probable Cost Each	Probable Percent Markup On Cost	Net Retail After Deducting 5.6% For Premium Stamp	Probable Net Percent Markup
	Gt Cheer	.73	.6794	7.44	.6891	1.43
	Gt Tide	.73	.6794	7.44	.6891	1.43
	Gt Fab	.73	.6794	7.44	.6891	1.43

We, the Undersigned, do certify that the action described in Sections A, B and C above were performed on July 15, 1954.

J. A. MITCHELL

- - - - - - -

85 S&H Green Trading Stamps Received From:

THRIF-T-WISE 4205 N. McArthur Oklahoma City, Oklahoma.

REPORTER'S NOTE:

Attached to the original Exhibit on page 3 thereof, is a cash register tape, as follows:

FAIRWAY
FOOD STORE
4205 N. McARTHUR
JUL 15 952

$ 1	0.69
$ 2	0.73
$ 3	1.00
$ 4	1.13
$ 5	0.29
$ 6	0.83
$ 7	0.93
$ 8	0.54
$ 9	0.47
$ 10	0.71
$ 11	0.21
$ 12	0.35
$ 13	0.27
$ 14	0.49
$ 15	0.29
$	8.70 TL

THANK YOU

and also attached is 85 Green trading Stamps, bearing the insigna "KVT - CO-OPERATIVE - 9hh".

[fol. 1155]

Calculation of Markup Percentages and S & H Green Trading Stamp Cost.

Greenhaw's 6941 S.E. 29th Midwest City, Oklahoma

A. The following items were purchased and paid for at prices shown as evidenced by an itemized cash register detail tape.

Item No.	Description of Item	Retail Selling Price Each	Probable Cost Each	Probable Percent Markup On Cost	Net Retail After Deducting 5.6% For Premium Stamp	Probable Net Percent Markup.
1.	3# Crisco	.95	.8839	7.48	.8968	1.46
2.	1# Cain's Coffee	1.13	1.065	6.10	1.0667	.16
3.	Tall Milnot	3/.29	.0696	7.88	3/.2737	1.82
4.	*lg. Colgate Tooth Paste	.27	.18	50.00	.2549	41.61
5.	* 24's Bayer Aspirin	.21	.1421	47.78	.1982	39.48
6.	Qt. Tide	.73	.6794	7.44	.6891	1.43
7.	*16oz Real Kill Insecticide	.69	.4166	65.62	.6514	56.36
8.	16oz Kraft Cheese Whiz	.49	.4542	7.88	.4626	1.85
9.	4½oz Gerber Str Baby Food	3/.25	.0777	7.25	3/.2360	1.22

* Fair Trade Items

B. 50 S & H Green Trading Stamps were received on total purchase, except for Sales Tax.

C. The following items were checked for Shelf Price and the Price and Markup Calculations are as follows:

Qt. Oxydol	.73	.6794	7.44	.6891	1.43
Qt. Cheer	.73	.6794	7.44	.6891	1.43
Qt. Fab	.73	.6794	7.44	.6891	1.43
Qt. Joy	.73	.6794	7.44	.6891	1.43

We, the Undersigned, do certify that the action described in Section A, B, and C above were performed on July 15, 1954.

JOHN McCLOUD

J. A. MITCHELL

50 S&H Green Trading Stamps Received From:

Greenhaw's Market, 6941 S. E. 29th, Midwest City, Oklahoma

REPORTER'S NOTE:

Attached to the original Exhibit on this page, is a cash register tape, as follows:

GREENHAW'S
MARKET
No.2
MIDWEST CITY

JUL 15 9749

$ 0.95 Gr A
$ 1.13 Gr A
$ 0.29 Gr A
$ 0.27 Gr A
$ 0.21 Gr A
$ 0.73 Gr A
$ 0.69 Gr A
$ 0.49 Gr A
$ 0.25 Gr A

$ 0.10 Tx A

$ 5.11 TL A

THANK YOU

and also attached is 50 Green Trading Stamps, bearing the insigna "KVT - CO-OPERATIVE - 809".

[fol. 1157]

Calculation of Markup Percentages and "Everedy Coupon" Cost

LAKESIDE #1 7531 N. May Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices shown as evidenced by an itemized cash register detail tape:

Item No.	Description of Item	Retail Selling Price Each	Probable Cost Each	Probable Percent Markup On Cost	Net Retail After Deducting 5.4% For Premium Stamp	Probable Net Percent Markup
1.	1# Cain's Coffee	1.13	1.065	6.10	1.0667	.16
2.	4½ oz Gerber Str Baby Food	3/.25	.0777	7.25	3/.2361	1.22
3.	Qt Crydol	.73	.679¼	7.44	.6891	1.43
4.	Tall Milnot	3/.29	.0896	7.88	3/.2737	1.82
5.	3# Crisco	.95	.8839	7.48	.8968	1.46
6.	*16 oz Neal Kill Insecticide	.69	.4166	65.62	.6514	56.36
7.	*Lg Colgate Tooth Paste	.27	.18	50.00	.2549	41.61
8.	*24's Bayer Aspirin	.21	.1421	47.78	.1982	39.48

*--Fair Trade Items

B. $4.50 Worth of "Everedy Coupons" were received on total purchase, except for Sales Tax.

C. The following items were checked for Shelf Price, and the Price and Markup Calculations are as follows:

Qt Tide	.73	.679¼	7.44	.6891	1.43
Qt Cheer	.73	.679¼	7.44	.6891	1.43
Qt Joy	.73	.679¼	7.44	.6891	1.43
Qt Fab	.73	.679¼	7.44	.6891	1.43

We, the Undersigned, do certify that the action described in Sections A, B, and C above were performed on July 15, 1954.

JOHN McCLOUD

J. A. MITCHELL

$4.50 worth of "Everredy" Coupons Received From:

LAKESIDE #1, 7531 N. May, Oklahoma City, Oklahoma

REPORTER'S NOTE:

Four (4) coupons attached, designated "EVERREDY" COUPON - $1.00 - Cash Value 5 Mills; and, one (1) coupon attached, designated "EVEREDY" COUPON - 50¢ - Cash Value 2½ Mills.

Also attached is Cash Register tape, as follows:

LAKESIDE
SUPER
MARKET
N. MAY AT
GRAND BLVD.

JUL 15 2678

$ 1 1.13 Gr A
$ 2 0.25 Gr A
$ 3 0.73 Gr A
$ 4 0.29 Gr A
$ 5 0.95 Gr A
$ 6 0.69 Gr A
$ 7 0.27 Gr A
$ 8 0.21 Gr A

$ 0.09 Tx A

$ 4.61 TL A

THANK YOU

[fol. 1159]

Calculation of Markup Percentages and S & H Green Trading Stamp Cost

THRIFT-T-WISE #3 4901 N. May Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices shown as evidenced by an itemized cash register detail tape:

Item No.	Description of Item	Retail Selling Price Each	Probable Cost Each	Probable Percent Markup On Cost	Net Retail After Deducting 5.4% For Premium Stamp	Probable Net Percent Markup
1.	Gt Cxydol	.73	.6794	7.44	.6891	1.43
2.	2# Kraft Velvesta Cheese	.79	.7802	1.02	.7468	(4.41)
3.	#3 Crisco	.95	.8839	7.48	.8768	1.48
4.	*16 oz Real Kill Insecticide	.69	.4166	65.62	.6514	56.36
5.	16 oz Kraft Cheese Whiz	.49	.4542	7.88	.4626	1.85
6.	1# Cain's Coffee	1.13	1.065	6.10	1.0667	.16
7.	Tall Kilnot	3/.29	.0896	7.88	3/.2737	1.82
8.	Big Colgate Tooth Paste	.27	.18	50.00	.2549	41.61
9.	24's Bayer Aspirin	.21	.1421	47.78	.1942	39.48
10.	#2 Libby Sliced Pineapple	.29	.2683	8.08	.2738	2.05
11.	12 oz Niblets Corn	.17	.1573	8.07	.1605	2.02
12.	4½ oz Gerber Str Baby Food	3/.25	.0777	7.25	3/.2360	1.22
13.	10# C&H Sugar	.97	.9330	3.93	.9157	(1.85)

* - Fair Trade Item
( ) Loss

B. 72 S&H Green Trading Stamps were received on total purchase except for Sales Tax.

C. The following items were checked for Shel Price, and the Price and Markup Calculations are as follows:

Gt Tide	.73	.6794	7.44	.6891	1.43
Gt Fab	.73	.6794	7.44	.6891	1.43
Gt Cheer	.73	.6794	7.44	.6891	1.43
Gt Joy	.73	.6794	7.44	.6891	1.43

We, the undersigned, do certify that the action described in Sections A, B, and C above were performed on July 15, 1954.

JOHN McCLOUD

J. A. MITCHELL

72 S&H Green Trading Stamps Received From:

Thrif-T-Wise #3, 4901 N. May, Oklahoma City, Oklahoma.

REPORTER'S NOTE:

72 Green Trading Stamps attached, designated "KVJ - CO-OPERATIVE - 843".

Also attached is Cash Register tape, as follows:

THRIF-T-WISE
SUPERMARKET
4901 N. May
— 3 —

JUL 14 099

$	1	0.73 Gr A
$	2	0.79 Gr A
$	3	0.95 Gr A
$	4	0.69 Gr A
$	5	0.49 Gr A
$	6	1.13 Gr A
$	7	0.29 Gr A
$	8	0.27 Gr A
$	9	0.21 Gr A
$	10	0.29 Gr A
$	11	0.17 Gr A
$	12	0.25 Gr A
$	13	0.97 Gr A
$		0.14 Tx A
$		7.37 TL A

WE GIVE
GREEN STAMPS

[fol. 1161]

Calculation of Markup Percentages and Chips Trading Stamp Cost

SPENSER 1302 Lochhead Midwest City, Oklahoma

A. The following items were purchased and paid for at prices shown as evidenced by an itemized cash register detail tape.

Item No.	Description of Item	Retail Selling Price Each	Probable Cost Each	Probable Percent Markup On Cost	Net Retail After Deducting 5.4% for Premium Stamp	Probable Net Percent Markup
1.	3# Crisco	.95	.8839	7.48	.8968	1.46
2.	Qt Tide	.73	.6794	7.44	.6891	1.43
3.	1# Cain's Coffee	1.13	1.065	(6.10)	1.0667	.16
4.	*16oz Real Kill Insecticide	.69	.4466	65.62	.6514	56.36
5.	*1g Colgate Tooth Paste	.27	.18	50.00	.2549	41.61
6.	*24's Bayer Aspirin	.21	.1421	47.78	.1982	39.48
7.	12oz Niblet Corn	.17	.1573	8.07	.1605	2.02
8.	10# C & H Sugar	1.00	.9330	7.14	.9460	1.38
9.	Tall Milnot	3/.29	.0896	7.88	3/.2737	1.82
10.	8oz Ballard & Pillsbury Biscuits	2/.17	.0792	7.32	2/.1605	1.33
11.	2# Kraft Velveeta Cheese	.79	.7802	(1.02)	.7658	(4.41)
12.	16oz Kraft Cheese Whiz	.49	.4542	7.88	.4626	1.85
13.	4½oz Gerber Str Baby Food	3/.25	.0777	7.25	3/.2360	1.22

* Fair Trade Items
( ) Loss

B. 72 Chips Trading Stamps were received on total purchase, except for Sales Tax.

C. The following items were checked for Shelf Price and the Price and Markup Calculation are as follows:

1.	Qt Cryclol	.73	.6794	7.44	.6891	1.43
2.	Qt Fab	.73	.6794	7.44	.6891	1.43
3.	Qt Cheer	.73	.6794	7.44	.6891	1.43
4.	Qt Joy	.73	.6794	7.44	.6891	1.43

We, the Undersigned, do certify that the action described in Sections A, B, and C above were performed on July 15, 1954.

JOHN McCLOUD

J. A. MITCHELL

[fol. 1162]

72 Chips Trading Stamps Received From:

SPENCER SUPER MARKET, 1302 Lockheed, Midwest City, Oklahoma

REPORTER'S NOTE:

72 yellow Trading Stamps attached, bearing the insigna,

CHIPS
saving
stamp
CHIPS

Also attached is Cash Register tape, as follows:

SPENCER
SUPER
MARKET
Midwest City

JUL 15 15:42

$ 1 0.95 Gr E
$ 2 0.73 Gr E
$ 3 1.13 Gr E
$ 4 0.69 Gr E
$ 5 0.27 Gr E
$ 6 0.21 Gr E
$ 7 0.17 Gr E
$ 8 1.00 Gr E
$ 9 0.29 Gr E
$ 10 0.17 Mt E
$ 11 0.79 Gr E
$ 12 0.49 Gr E
$ 13 0.25 Gr E

$ 0.44 Tx E

*$ 7.28 TL E

THANK YOU

[fol. 1163]

Calculation of Markup Percentages and S & H Green Trading Stamp Cost

SCOTT'S #2 3940 N. W. 10th Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices shown as evidenced by an itemized cash register detail tape.

Item No.	Description of Item	Retail Selling Price Each	Probable Cost Each	Probable Percent Markup On Cost	Net Retail After Deducting 5.6% For Prem. Stamp	Probable Net Percent Markup
1.	10# C & H Sugar	1.00	.9330	7.24	.9440	1.18
2.	3# Crisco	.93	.8839	5.21	.8779	(.68)
3.	Gt Tide	.73	.6794	7.44	.6891	1.43
4.	2# Kraft Velveeta Cheese	.83	.7802	6.33	.7835	.42
5.	Tall Milnot	3/.29	.0896	7.88	3/.2737	1.82
6.	4½ oz Gerber Str Baby Food	3/.25	.0777	7.25	3/.2360	1.22
7.	*Real Kill Insecticide 16oz	.69	.4166	65.62	.6514	56.36
8.	1# Cain's Coffee	1.13	1.065	6.10	1.0667	.16
9.	*lg Colgate Tooth Paste	.27	.18	50.00	.2549	41.61
10.	*24's Bayer Aspirin	.21	.1421	47.78	.1982	39.48

* Fair Trade Items

B. 63 S & H Green Trading Stamps were received on total purchase, except for Sales Tax.

C. The following items were checked for Shelf Price and the Price and Markup Calculations are as follows:

Giant Oxydol	.73	.6794	7.44	.6891	1.43
Giant Fab	.73	.6794	7.44	.6891	1.43
Giant Cheer	.73	.6794	7.44	.6891	1.43
Giant Joy	.73	.6794	7.44	.6891	1.43

We, the Undersigned, do certify that the action described in Sections A, B, and C above were performed on July 15, 1954.

JOHN McCLOUD

J. A. MITCHELL

[fol. 1164]

63 S&H Green Trading Stamps Received From:

SCOTT'S FOOD MART #2 3940 N. W. 10th, Oklahoma City, Oklahoma

REPORTER'S NOTE:

63 Green Trading Stamps attached, 10 of which bear the insigna, "KVT - CO-OPERATIVE - 868", and 53 of which bear the insigna, "KVR - CO-OPERATIVE - 979".

Also attached is Cash Register tape, as follows:

SCOT'S FOOD
MART, INC.
No. 2
3940 N.W. 10th

JUL 15 1780

$ 1 1.00 Gr A
$ 2 0.93 Gr A
$ 3 0.73 Gr A
$ 4 0.83 Gr A
$ 5 0.29 Gr A
$ 6 0.25 Gr A
$ 7 0.69 Gr A
$ 8 1.13 Gr A
$ 9 0.27 Gr A
$ 10 0.21 Gr A

$ 0.13 X A

*$ 6.49 TL A
03
6.46

THANK YOU
2 —

[101-1105]

Calculation of Markup Percentages and S & H Green Trading Stamp Cost

SCOTT'S #1 2517 S. Central Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices shown as evidenced by an itemized cash register detail tape.

Item No.	Description of Item	Retail Selling Price Each	Probable Cost Each	Probable Percent Markup On Cost	Net Retail After Deducting 5.6% For Premium Stamp	Probable Percent Net Markup
1.	Qt Joy	.73	.6794	7.44	.6891	1.43
2.	16 oz Kraft Cheese Whiz	.49	.4562	7.38	.4626	1.85
3.	3# Crisco	.95	.8839	7.48	.8968	1.46
4.	10# C&H Sugar	1.00	.9330	7.14	.9440	1.18
5.	4½ oz Gerber Str Baby Food	3/.25	.0777	7.25	3/.2360	1.22
6.	*16 oz Real Kill Insecticide	.69	.4166	65.62	.6514	56.36
7.	2# Kraft Velvesta Cheese	.83	.7802	6.13	.7930	1.64
8.	1# Cain's Coffee	1.13	1.065	6.10	1.0667	.16
9.	Tall Milnot	3/.29	.0896	7.88	3/.2739	1.82
10.	*24's Bayer Aspirin	.21	.1421	47.78	.1982	39.48
11.	*1g Colgate Tooth Paste	.27	.18	50.00	.2549	41.61

* - Fair Trade Items

B. 68 S&H Green Trading Stamps were received on total purchase, except for Sales Tax.

C. The following items were checked for Shelf Price and the Price and Markup Calculations are as follows:

Giant Tide	.73	.6794	7.44	.6891	1.43
Giant Fab	.73	.6794	7.44	.6891	1.43
Giant Dheer	.73	.6794	7.44	.6891	1.43
Giant Oxydol	.73	.6794	7.44	.6891	1.43

We, the Undersigned, do certify that the action described in Sections A, B, and C above were performed on July 15, 1954.

JOHN McCLOUD

J. A. MITCHELL

68 S&H Green Trading Stamps Received From:

SCOTT'S #1 2517 S. Central, Oklahoma City, Oklahoma

REPORTER'S NOTE:

68 Green Trading Stamps attached, 50 of which bear the insigna, "KYT - CO-OPERATIVE - 988", and 18 of which bear the insigna, "KVW - Co-OPERATIVE - 13".

Also attached is Cash Register tape, as follows:

SCOTT'S
THRIF-T-WISE
FOOD MARKET
2517 South Central

JUL -5

$ 1	0.73	Gr D
$ 2	0.49	Gr D
$ 3	0.95	Gr D
$ 4	1.00	Gr D
$ 5	0.25	Gr D
$ 6	0.69	Gr D
$ 7	0.83	Gr D
$ 8	1.13	Gr D
$ 9	0.29	Gr D
$ 10	0.29	Gr D
$ 11	0.27	Gr D
$	0.14	Tx D
3 1 9	$	6.98 Gr D

[fol. 1167]

Calculation of Markup Percentages and S & H Green Trading Stamp Cost.

MISKOVSKY 3031 N.W. 23rd Oklahoma City, Oklahoma

A. The following items were purchased and paid for at prices as evidenced by an itemized cash register detail tape:

Item No.	Description of Item	Retail Selling Price Each	Probable Cost Each	Probable Percent Markup On Cost	Net Retail After Deducting 5.6% For Premium Stamp	Probable Net Percent Markup
1.	Gt. Tide	.73	.6794	7.44	.6891	1.43
2.	3# Crisco	.55	.8839	7.48	.8968	1.46
3.	1# Chain's Coffee	1.13	1.065	6.10	1.0667	.16
4.	15oz Real Kill Insecticide	.69	.4166	65.62	65.44	56.36
5.	Tall Milnot	3/.29	.0896	7.88	3/.2737	1.82
6.	Big Colgate Tooth Paste	.27	.18	50.00	.2549	41.61
7.	*24's Bayer Aspirin	.21	.1421	47.78	.1982	39.48
9.	4½oz Gerber Str Baby Food	3/.25	.0777	7.25	3/.2360	1.22

* Fair Trade Items

B. 44 S & H Green Trading Stamps were received on total purchase, except for Sales Tax.

C. The following items were checked for Sehlf Price, and the Price and Markup Calculations are as follows:

Gt. Oxydol	.73	.6794	7.44	.6891	1.43
Gt. Fab	.73	.6794	7.44	.6891	1.43
Gt. Cheer	.73	.6794	7.44	.6891	1.43
Gt. Joy	.73	.6794	7.44	.6891	1.43

We, the Undersigned, do certify that the action described in Sections A, B, and C above were performed on July 15, 1954.

JOHN McCLOUD

J. A. MITCHELL

618
[fol. 1168]

44 S&H Green Trading Stamps Received From:

MISKOVSKY'S 3031 N.W. 23rd, Oklahoma City, Oklahoma

REPORTER'S NOTE:

44 Green Trading Stamps attached, bearing the insigne, "AVT - CO-OPERATIVE - 272".

Also attached is Cash Register tape, as follows:

MISKOVSKY
FOODS
23rd and Drexel
Okla. City, Okla.

JUL 15 8680

$	1	0.73 Fr D
$	2	0.95 Gr D
$	3	1.13 Gr D
$	4	0.69 Gr D
$	5	0.29 Gr D
$	6	0.27 Gr D
$	7	0.25 Gr D
$	8	0.25 Gr D
$		0.09 Tx D
*$		4.65 TL D

4.61

THANK YOU

[fol. 1169]

DEFENDANT'S EXHIBIT 20

[fol. 1170]

DEFENDANT'S EXHIBIT 21

SAFEWAY STORES
INCORPORATED

621 NORTH ROBINSON . . . OKLAHOMA CITY, OKLAHOMA

Mailing Address:
P.O. Box 557 . . . OKLAHOMA CITY 1, OKLAHOMA

January 30, 1953

RECEIVED
JAN 31 1953
8:20
E.J.C.T.&B.
Okla. City

Mr. V. P. Crowe
Embry, Johnson, Crowe, Tolbert & Boxley
First National Building
Oklahoma City, Oklahoma.

Rainbow Dividend Stamps

Dear Vip:

There are several grocers in Oklahoma City that are promoting various kinds of dividend stamps. One group, which includes Stockton's IGA, Kimberling's IGA, and Jim Miskovsky's IGA, are using Rainbow Dividend Stamps.

In this morning's Daily Oklahoman a group of stores, including Lakeside, Miskovsky's on 23rd St., and Corsin's, ran a two color ad promoting S & H Green Stamps.

The point that I would like to have you check into is that of how these dividend stamp arrangements affect the minimum markup percentage that must be realized according to the Oklahoma Unfair Sales Act (6% Law).

According to the information that I have, the Rainbow Dividend Stamps cost the merchant 1¢ each, and as one stamp is given for each 50¢ purchase this would amount to

a cost of 2% of sales. I have been unable to determine exactly what the S & H Stamps cost the merchants.

I am attaching a list on a few items that ordinarily retail at or near the minimum allowable under this law. If these items are sold by the grocers who use the Rainbow Stamp Plan it would appear to me that they are selling the items at the minimum price and then giving a refund through the stamps of about 2%.

I would like to have you check into this and see if an opinion has ever been given, and if not what is the opinion of the Attorney General?

Very truly yours,

THANKS — CHRIS

W. A. Christensen

WAC jw
Attach.

[fol. 1171]

Comparison of Retail Prices on Items Retailing at or Near the Oklahoma Legal Minimum

Test taken as of December 20, 1952

Size	Item	Safeway	% Profit Based on Our Cost	Stockton's IGA 1912 N. E. 23
		$	%	$
15 oz.	Dreft	.29	6.26	.29
18 oz.	Tide	.29	6.26	.29
12 oz.	Cheer	.29	6.26	.29
15 oz.	Vel.	.29	6.26	.29
18 oz.	Surf	.29	6.26	.29
6 oz.	Joy	.29	6.26	.29
19 oz.	Oxydol	.29	6.26	.29
20½ oz.	Duz	.27	6.23	.27
23 oz.	Supersuds	.27	6.93	.27
23 oz.	Rinso	.27	6.93	.27
23 oz.	White King	.27	6.93	.27
1#	Folgers Coffee	.91	8.39	.91
1#	Hills Bros. Coffee	.91	8.39	.91
1#	Maxwell House Coffee	.91	8.39	.91
1#	Sanka	.99	7.71	.99
1#	Cains	.81	6.00	.81
#300	Oceanspray Cr'nberry	2/39	8.58	2/39
#300	Oceanspray Cr'nberry Whole	2/39	8.58	2/39
Small	Pet Milk	2/15	8.27	2/15
Large	Pet Milk	.15	8.27	.15
14½ oz.	Milnot	3/35	7.69	3/35
Small	Milnot	6/35	7.55	6/35
Small	Carnation	2/15	8.27	2/15
Large	Carnation	.15	8.27	.15
3#	Crisco	.89	8.65	.89
1#	Crisco	.32	8.07	.32
3#	Spry	.89	8.65	.89

[fol. 1172]

DEFENDANT'S EXHIBIT No. 22

February 4, 1953.

Mr. W. A. Christensen,
Safeway Stores, Inc.
Post Office Box 557,
Oklahoma City 1, Oklahoma.

Re: Rainbow Dividend Stamps.

Dear Sir:

This refers to your letter of January 30th wherein you request our opinion as to whether the giving of trading stamps with the sale of certain articles which are being sold at or near cost constitutes a violation of the Oklahoma Unfair Sales Act and whether the Attorney General of Oklahoma has ever written an opinion on this subject.

Assuming that the cost of these stamps to the merchant is two per cent (2%) of the sales price of the article and the article is offered for sale and sold at the minimum cost to the merchant we are of the opinion that the giving of trading stamps constitutes a reduction in the sales price thus bringing it below the minimum required by law and is in violation of the Oklahoma Statute. Title 15 O.S.A. Section 598.2 (d) reads as follows:

> "When one or more items are advertised, offered for sale or sold with one or more other items at a combined price, or are advertised, offered as a figt, or given with the sale of one or more other items, each and all of said items shall for the purposes of this Act be deemed to be advertised, offered for sale, or sold, and the price of each item named shall be governed by the provisions of paragraphs (a) or (b) of Section 2, respectively."

[fol. 1173] Neither the Supreme Court nor the Attorney General has passed upon this specific question but it is our opinion that the foregoing section of the statute was designed to prevent merchants from circumventing the effect

of the statute by the making of gifts in connection with sales where the combined cost of the merchandise and premium results in a sale below cost.

In this connection, however, it must be noted that in dealing with a somewhat comparable situation the Attorney General of Oklahoma has reached a different conclusion. On May 8, 1950, the Attorney General of Oklahoma wrote an opinion wherein he held that the giving of trading stamps does not constitute price cutting and this practice did not constitute a violation of the dry cleaners minimum price schedule as fixed by the Board. The statute under consideration provided that the State Cry Cleanders Board might fix a minimum price for cleaning and pressing garments and made the violation of this price schedule actionable by the Board. Schedule was fixed for the County of Muskogee and the Board requested an opinion of the Attorney General as to whether or not the giving of green trading stamps was a violation of the price schedule. Based upon the decisions in the cases of *Food and Grocery Bureau of Southern California* vs. *Garfield*, 125 P.2d 3, *Weco Products Co.* vs. *Mid-City Cut Rate Drug Stores*, 131 P.2d 856 and *Bristol-Myers Co.* vs. *Lit Bros. Inc.*, 6 Atlantic 2d 843, the Attorney General said:

> "Thus the weight of law, logic and reason, as declared by decisions of various courts, holds clearly and distinctly to the view that the practice of giving trading stamps does not amount to, nor will it sustain a charge of, price cutting."

The cases relied upon are in our opinion distinguishable, however, from the statute now under consideration. Two of these cases dealt with fair trade items and the court said that the use of trading stamps amounted to nothing more than a cash discount which was not only permissible but customary in the trade. In the case of *Food and Grocery Bureau of Southern California* vs. *Garfield* the Supreme Court had before it a statute very similar to our own which prevented the sale of any article at less than the cost to the vendor or the giving away of any article or product for the purpose of injuring competitors. Suit was brought to

enjoin the giving of trading stamps but apparently no effort was made to show that the combined costs of the merchandise and stamps resulted in a sale below cost. The only [fol. 1174] question was whether the gift of these stamps was for the purpose of injuring competitors and the court held that the issuance of these stamps did not constitute a "gift" but constituted a cash discount. At page 6 of the opinion the court said:

> "But the association does not assert that the appellant's issuance of trading stamps resulted in the sale of any commodities below cost, and the affidavits filed by it do not include any facts indicating that sales below cost were accomplished by the use of stamps."

The foregoing exerpt from the California Court's decision would seem to indicate that if the issuance of the trading stamps resulted in sales below cost that this would have constituted a violation of the Act. A more realistic view of the use of premiums has been taken by other courts and represent, we believe, the better view. In the case of *E. R. Squibb & Sons* vs. *Charline's Cut Rate* (N.J. 1950) 74 Atlantic 2d 354, the court said of the Pennsylvania decision cited above the following:

> "In Bristol-Myers Co. v. Lit Bros., 335 Pa. 81, 6 A.2d 854 (Pennsylvania Sup. Ct.), the defendant Lit Bros. issued and delivered trading stamps as part of its retail sales of the plaintiff's trademarked products, which trading stamps were redeemable or exchangeable for premiums on articles of value and were issued to purchasers of the plaintiff's trademarked commodities. It was there held in the majority opinion of the Court that the issuance of such stamps with purchases of trademarked commodities came within the sphere of legitimate competition and did not violate the Pennsylvania Fair Trade Act. Mr. Justice Drew wrote a dissenting opinion (Chief Justice Kephart concurring), in which he in a most scholarly manner reviewed the history of fair trade legislation and arrived at the conclusion that the issuance of trading stamps with pur-

chases of trademarked commodities was a violation of the Fair Trade Act. I agree with his reasoning and conclusion."

In the case of *Bristol-Myers Co.* vs. *Picker*, (N.Y. 1950) 96 N.E. 2d 177 the third syllabus reads:

"3. Trade-marks and trade-names and unfair competition.

Plan of retailer who sold branded and trade-marked products of manufacturer, and issued redeemable cash register receipts to his customers who bought manufacturers' products, which receipts customers could use to buy twenty-five cents worth of merchandise for every $10 worth of merchandise purchased from retailer, or from other designated retailers, simply reduced minimum resale price of products by 2½% in [fol. 1175] violation of Fair Trade Law. General Business Law §§ 369-a to 369-e."

Regardless of whether the use of trading stamps is looked upon as a method of cutting prices below the schedule fixed by the manufacturer on fair trade items we are of the opinion that the above quoted portion of the Oklahoma Statute does not admit of any construction other than that the cost to the retailer of trading stamps must be included in order to compute the cost to him of any articles sold and it is immaterial whether it is looked upon as a price cutting method or treated as a cash discount instead of a gift.

Under the law the Attorney General is not permitted to render an opinion except upon request of a public officer but if you feel that an opinion would be helpful in this case we will be very glad to discuss the matter with the County Attorney for the purpose of inducing him to request an opinion on this matter. If such a request is made we believe that it would be advisable for us to furnish the Attorney General with the authorities on which we rely in order that he may have them before him at the time the opinion is written.

We trust that this is the information you desire and that if we can be of any further service you will call upon us.

Very truly yours,

EMBRY, JOHNSON, CROWE, TOLBERT & BOXLEY

John W. Swinford

JWS/za

[fol. 1176]

DEFENDANT'S EXHIBIT 23

Importance of "Double Stamp Day"
To Competitors Giving Trading Stamps
Oklahoma City, Oklahoma
July–August 1954

Oxford Business Surveys
Study No. 54-399
August 17, 1954

RECEIVED
AUG 24 1954
OKLAHOMA CITY
DIVISION OFFICE

[fol. 1177]

INTRODUCTION

The purpose of this survey was to estimate the weekly sales of competitors in Oklahoma City who give trading stamps, and to determine the share of total weekly business done by these stores on Wednesday (double stamp day).

Our survey covered these six representative competitors who are giving stamps or coupons:

Speed's Food Market #3, 1218 N. Pennsylvania (S & H Green stamps, double stamps on Wednesday)

Lakeside #1, 7531 N. May (Everedy coupons, double coupons on Wednesday)

Thrif-T-Wise, 5901 N. May (S & H Green stamps, double stamps on Wednesday)

Miskovsky's, 3031 N. W. 23rd (S & H Green stamps, double stamps on Wednesday)

Scott's, 2517 S. Central (S & H Green stamps, double stamps on Wednesday)

Spencer's, 1302 E. Lockheed, Midwest City (Chips stamps, double stamps on Wednesday)

At each of these stores we developed our estimate in these steps:

1. We counted customers leaving each store during the entire time the location was open for a full week. At Speed's, Lakeside, Thrif-T-wise, and Miskovsky's our observations were made from Wednesday, July 28, through Tuesday, August 3. Both Speed's and Miskovsky's were closed on Sunday. The survey at Scott's and Spencer's ran from Wednesday, August 4, through Tuesday, August 10. Both of these stores were open on Sunday.

2. On Wednesday, Saturday, and Monday of these weeks we observed a sample of ring-ups at each of the six stores. We were able to observe over one-quarter of all of the ring-ups in each of the stores.

   We then multiplied the count of customers for each of these three days by the average ring-ups for each day to get daily sales. We used the Saturday average ring-up (typical of the week-end) for Friday, and the Monday ring-up (typical of week day) for Thursday, Sunday, and Tuesday. Again we multiplied the average ring-ups at each store by the customer counts to get daily sales. Totaling the days we were able to estimate weekly sales at each store.

[fol. 1178] SUMMARY

Share of Business Done on Wednesday:

The stores which give S & H Green stamps appear to do a larger share of business on Wednesday than stores which give other types of stamps or coupons. Of the four stores checked which give S & H stamps (Thrif-t-wise, Miskov-

sky's, Speeds, and Scott's) all did as much or more on Wednesday as on Saturday. At the other two stores we checked which had other stamp or coupon plans, Wednesday was the third-busiest day in the week.

Stores Which Give S & H Green Stamps	*% of Total Week's Business Done on Wednesday*
Speed's	37%
Thrif-t-wise	29%
Miskovsky's	29%
Scott's	22%
Stores Which Give Other Types of Stamps or Coupons	
Lakeside #1 (Everedy Coupons)	19%
Spencer's (Chips Stamps)	17%

Estimated Weekly Sales:

In order to determine our estimate for daily and weekly sales, we counted customers as they left each store during the entire time it was open for one week between a Wednesday and a Tuesday. (Speed's and Miskovsky's were closed on Sunday, but the other four stores were open seven days.) On Wednesday, Saturday, and Monday we observed a sample of ring-ups in each of the stores. We were able to record over one fourth of all ring ups on these days in each of the stores checked.

We multiplied the customer counts for these three days by the average transaction for the same days to get daily sales. We used the Saturday average ring-up (which we assumed to be typical of a week-end day) to estimate sales for Friday, and the Monday average ring-up (which we assumed to be typical of a week-day) to estimate sales for Thursday, Sunday, and Tuesday, at each store. Tables on the following pages show daily customer counts, average ring-ups, and sales at each of the six stores.

[fol. 1179]

Speed's Food Market #3, 1218 N. Pennsylvania
(S & H Green Stamps)

	Customers	Average Transaction	Estimated Sales	% of Total Week
Wednesday, July 28	428	$5.10	$2,180	37%
Thursday, July 29	294	2.14	630	11
Friday, July 30	315	3.04	960	16
Saturday, July 31	353	3.04	1,070	18
Sunday, August 1		Closed		
Monday, August 2	262	2.14	560	9
Tuesday, August 3	258	2.14	550	9
Total week	1,910	$3.12	$5,950	100%

Thrif-t-wise, 4901 N. May
(S & H Green Stamps)

	Customers	Average Transaction	Estimated Sales	% of Total Week
Wednesday, July 28	519	$4.80	$2,490	29%
Thursday, July 29	308	2.13	660	8
Friday, July 30	370	4.01	1,480	17
Saturday, July 31	461	4.01	1,850	21
Sunday, August 1	314	2.13	670	8
Monday, August 2	342	2.13	730	9
Tuesday, August 3	304	2.13	650	8
Total Week	2,618	$3.25	$8,510	100%

[fol. 1180]

Miskovsky's, 3031 N. W. 23rd
(S & W Green Stamps)

	Customers	Average Transaction	Estimated Sales	Total Week
Wednesday, July 28	572	$5.75	$ 3,290	29%
Thursday, July 29	377	2.97	1,120	10
Friday, July 30	407	4.99	2,030	18
Saturday, July 31	556	4.99	2,770	25
Sunday, August 1		Closed		
Monday, August 2	356	2.97	1,060	9
Tuesday, August 3	353	2.97	1,050	9
Total week	2,621	$4.32	$11,320	100%

Lakeside #1, 7531 N. May
(Everedy Coupons)

	Customers	Transaction	Estimated Sales	% of Total Week
Wednesday, July 28	534	$3.90	$1,780	19%
Thursday, July 29	473	1.86	880	9
Friday, July 30	475	3.95	1,880	20
Saturday, July 31	585	3.95	2,310	24
Sunday, August 1	524	1.86	980	10
Monday, August 2	443	1.86	820	9
Tuesday, August 3	459	1.86	850	0
Total week	3,412	$2.71	$9,500	100%

REPORTER'S NOTE: Attached to original Exhibit is a coupon, marked "EVEREDY" COUPON, $1.00 Cash Value 5 mills, and other writing thereon, not copied here.

[fol. 1181]

Scott's, 2517 S. Central
(S & H Green Stamps)

	Customers	Average Transaction	Estimated Sales	% of Total Week
Wednesday	826	$4.65	$ 3,840	22%
Thursday	930	2.37	2,200	9
Friday	864	5.43	4,690	20
Saturday	773	5.12	3,960	22
Sunday	766	3.28	2,510	14
Monday	516	3.28	1,690	10
Tuesday	516	3.28	1,690	10
Total Week	4,336	$4.08	$17,700	100%

Spencer's, 1302 E. Lockheed, Midwest City
(Chips Stamps)

	Customers	Average Transaction	Estimated Sales	% of Total Week
Wednesday	890	$4.40	$ 3,920	17%
Thursday	930	2,37	2,200	9
Friday	864	5,43	4,690	20
Saturday	1094	5.43	5,940	25
Sunday	1253	2.37	2,970	12
Monday	793	2.37	1,880	8
Tuesday	849	2.37	2,010	9
Total Week	6,673	$3.54	$23,610	100%

REPORTER'S NOTE:
Sample of Chips Saving Stamp attached to original exhibit.

[fol. 1182] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 37,326

SAFEWAY STORES, INCORPORATED, a Foreign Corporation, Plaintiff in Error,

vs.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., a Corporation, and LOUIE J. SPEED, INC., a Corporation, Defendants in Error.

SYLLABUS

1. The Oklahoma Unfair Sales (Practices) Act, 15 O. S. 1951, Sec. 598.1, et seq., provides a remedy by injunction against repetitive violations thereof, and the availability of the injunctive remedy and that of interlocutory decrees based on actions therefor precludes competitors from immediately indulging in, or resorting to, the same practices themselves violative of the Unfair Practices Act governing merchandising; and, where a corporation operating a chain of grocery stores, admittedly cut prices of its merchandise below the statutory minimum cost violative of the Unfair Sales (Practices) Act, in order to meet what it thought was illegal, or below cost prices of its competitors, it thereby became amenable to the inunnctive (sic) remedy provided for in the Unfair Practices Act; and we hold that the injunctive action of the trial court against such corporation, as shown in this opinion, was proper and timely.

[fol. 1183] 2. Single trading stamps given by a grocer in the usual and customary manner, of the value of 2.5 percent of the cost of the merchandise, and which were redeemable by cash or merchandise, constituted a device for giving a discount for cash, and the giving of such stamps with commodities sold at minimum prices under the Unfair Sales (Practices) Act, did not constitute a vio-

lation of the Act, and the trial court's refusal of injunctive restraint giving such stamps was not error.

APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA

Hon. F. B. H. Spellman, Assigned Judge.

Action by Oklahoma Retail Grocers Association against Safeway Stores to enjoin it from selling merchandise below statutory minimum cost in violation of Unfair Sales Act, and wherein Safeway by cross-petition made Louie J. Speed, Inc., a corporation, and others defendant, and sought to have them enjoined from giving trading stamps to their customers allegedly in violation of the Unfair Sales (Practices) Act. From a judgment permanently enjoining Safeway from selling merchandise below statutory minimum cost and refusing to enjoin Speed from issuing trading stamps to his customers in the usual manner as cash discount, Safeway appeals.

AFFIRMED

[fol. 1184] Embry, Crowe, Tolbert, Boxley & Johnson, V. P. Crowe, John W. Swinford, Oklahoma City, Oklahoma, For Plaintiff in Error.

Drummond Wilde, R. J. Van Gemert, Oakland, California, of Counsel.

Miskovsky and Miskovsky, William J. Holloway, Looney, Watts, Looney and Nichols, Oklahoma City, Oklahoma, Samuel M. Lane, 26 Broadway, New York City, New York, For Defendants in Error.

OPINION—Filed December 24, 1957

JOHNSON, J:

This is an action brought by Oklahoma Retail Grocers Association, Inc., a corporation, against Safeway Stores, Incorporated, a foreign corporation, to enjoin it from selling groceries below cost in violation of the Oklahoma Unfair Sales Act, 15 O. S. 1951, Sec. 598.1-598.11.

The Safeway Company by cross-petition made Louie J. Speed, Inc., a corporation, and other grocers parties defendant. Safeway in its cross-petition asked for injunctive relief against Speed, et al., alleging that they, as its competitors, had violated Unfair Sales Act.

[fol. 1185] Safeway in its answer admitted selling groceries below minimum statutory cost, bue (sic) denied that its advertisement, offer for sale, or sale of the alleged articles, was in violation of the Oklahoma Unfair Sales Act, and alleged that its prices were made in good faith to meet the prices of its competitors who were, on the dates complained of, selling the same articles or products of comparable quality at such prices, or below minimum cost by giving trading stamps in violation of the Unfair Sales Act.

In the trial of the case Speed admitted that it issued single trading stamps to its customers on all purchases of groceries, and on certain days that it issued double stamps, and that sales below the statutory cost were accomplished by use of even the single stamps, but contended that the stamps were in the nature of a cash discount and not violative of the Unfair Sales Act.

The court issued a permanent injunction against Safeway prohibiting it from advertising, offering for sale or selling merchandise below the minimum prices as fixed by the Oklahoma Unfair Sales Act.

[fol. 1186] As to Speed, the court found that the giving of stamps in accordance with the trading stamp contract was in the nature of a cash discount and not in violation of the Unfair Sales Act, but made permanent the injunction restraining Speed from issuing or giving double stamps to its customers with purchases of merchandise.

Safeway and the Retail Grocers Association and, by agreement, Speed, were the only parties involved in the trial, and Safeway alone appeals.

Safeway contends that the Unfair Sales Act is violative of certain provisions of the Oklahoma Constitution and the Constitution of the United States. However, the constitutionality of the Unfair Sales Act as amended, after Englebrecht v. Day, et al., 201 Okla. 585, 208 P. 2d 538, was upheld in Adwon v. Oklahoma Retail Grocers Asso-

ciation, Inc., 204 Okla. 199, 228 P. 2d 376. Therefore, the constitutional questions herein raised, being substantially the same as in the Adwon case, we deem it unnecessary to consider the issue of the constitutionality of the Unfair Sales Act in the instant case.

[fol. 1187] Many cases from other jurisdictions and authorities have been cited and quoted from by all parties involved in this lawsuit. But a study of them clearly indicates a large variety of statutes, differing materially from ours in concept, if not in purpose, to such an extent that we deem it unnecessary to refer to all such cases herein by citing and considering them.

We are concerned herein only in the interpretation and application of Oklahoma's Unfair Sales Act as applied to the particular facts in this case. See 15 O. S. 1951, Sec. 598.1, et seq., Laws of 1949, p. 103, Sec. 1, et seq. We must construe and interpret the Unfair Sales Act so as to give it practical meaning and effect within the legislative intent. However, until a proper factual case is presented which requires a clear determination and offers a practical situation in which all the conflicting problems and considerations of the area involved are apparent, this court will refrain from theorizing. This is particularly true in cases involving the field of economic regulation. The eventual goal of any interpretation must be viewed in the practical situation existing in the field to be regulated.

[fol. 1188] Safeway contends that it was not and is not amenable to injunctive restraint from admittedly selling merchandise below the statutory cost under the Unfair Sales Act, 15 O. S. 1951, Sec. 598.3, because under Sec. 598.7 of the Act it had the right to advertise, offer to sell, or sell merchandise at a price made in good faith to meet the price of a competitor who was selling the same article or products of comparable quality at cost to it as a retailer. It seeks to justify its price cutting action on the ground that when its competitors gave trading stamps, cash register receipts or things of like nature of such value with their sales of merchandise, which in effect reduced the price of their merchandise below minimum cost, that that constituted sales below cost or price

cutting in violation of the Unfair Sales Act, and that it had a right to meet such competition by reducing its prices to the extent of the value of the trading stamps.

In other words, Safeway contends that its action was justifiable because of the alleged wrongful acts of its competitors, and that its actions in the premises constitutes "good faith" in accord with Sec. 598.7, which exempted it from the injunctive provisions of Sec. 598.5 of the Unfair Sales Act. We do not agree.

[fol. 1189] In this connection our attention has been called to the recent case (10-4-57) of State v. Wolkuff, (Minn.) 85 N. W. 2d 401, wherein it was held that "(I)f a merchant in good faith sets the price of an article on the basis of a competitor's price, which price he in good faith believes to be a *legal one*, there is no violation," which clearly is not the case herein. In the instant case, Safeway obviously and admittedly did not, in good faith, set the price of its articles which were subject to the Unfair Sales Act on the basis of its competitors' prices, which it in good faith believed to be legal prices under the Unfair Sales Act, but on the contrary it set illegal prices for the sole purpose of meeting prices of its competitors, which it thought to be illegal.

In considering unfair sales practice acts from a procedural viewpoint, commentators have observed the wisdom of the legislatures in providing the remedy by injunction, and the increasing tendency of the courts to enjoin, at the suit of competitors, repeated violations affecting the unfair conduct of business. Availability of the injunctive [fol. 1190] remedy and that of interlocutory decrees based on actions therefor precludes the practice indulged in by many fair minded competitors immediately to meet competition by resorting to the same practices themselves. Since actions for injunctions may be filed by a trade association for the benefit of all its members, the practice of resorting to the same practices to meet competition is materially reduced, for the natural restraint against suing a competitior (sic) is less present in the seeking of immediate relief against threatened piratical price wars. 10 So. C. L. Rev. 22. See also 21 Iowa L. Rev. 175, 236;

42 Harv. L. Rev. 693; 13 Tex. L. Rev. 136; and 25 Cal. L. Rev. 1088, and cited cases.

We are of the opinion that this injunction granted by the trial court against Safeway was proper, because under our statute the appropriate remedy was by injunction and not by retaliation or retaliatory action, such as was practiced by Safeway. In this respect the judgment of the trial court is affirmed.

We come now to Safeway's cross-petition and its contention that the trial court erred in refusing to enjoin Speed and restrain him from distributing trading stamps with articles priced at the minimum under the Unfair Sales Act.

[fol. 1191] Safeway's cross-petition charged that Speed by the use of trading stamps was selling his merchandise below the statutory minimum cost in violation of the Unfair Sales Act.

Speed in his answer to the cross-petition admitted that he was a retail grocer, in competition with Safeway, that for a number of years he had been distributing S & H trading stamps with all merchandise, including those items which were offered for sale at the statutory minimum; that the stamps were worth approximately 2.5 percent of the sales price of the merchandise, but did not reduce the sales price because they constituted the only practical means of allowing a discount for cash.

Speed defends on the grounds that single trading stamps (the court having enjoined him from issuing double stamps on his sales) do not reduce the price of merchandise, but constitute only a discount for cash on his sales.

In recent years there have been many appellate court decisions dealing with the subject of trading stamps, and several Law Review articles have been written concerning them and their legal effect upon economic regulatory measures. See cited authorities supra and infra.

[fol. 1192] An extensive article appears in 105 Pa. L. Rev. 242, et seq. entitled "Trading Stamps: A Challenge to Regulation of Price Control" wherein in referring to trading stamps it is said: (quoting from Wall St. Journal, April 23, 1956, p. 1, col. 6.) "Assailed by some 'as a costly device that raises family food bills' and hotly defended

by others as 'a perfectly legal promotional tool,' trading stamps have become a center of controversy in the merchandising field. Though stamp plans have enjoyed a rapid upsurge in growth since World War II, the idea itself is over fifty years old." (See 24 Tenn. L. Rev. 557-58, 1956).

Descriptions of the various stamp plans may be found in 24 Tenn. L. Rev., supra. However, there being no statute in Oklahoma prohibiting the use of trading stamps as such, we are concerned herein only with the application of and/or relation of trading stamps to unfair competition and below cost sales under our statute; see "The Unfair Sales Act," Laws 1949, p. 103, Sec. 1, et seq.; 15 O. S. 1951, Sec. 598.1, et seq. which as noted by the title [fol. 1193] of the Act, is designated as "An Act defining and prohibiting unfair sales practices with a view of preventing the advertising, offering for sale, or the selling of merchandise below cost for the purpose of injuring competitors, destroying, or substantially lessening competition; providing remedies for violation thereof; establishing a penalty therefor, etc."

The question of whether giving trading stamps in the usual manner with merchandise sold at the statutory minimum constitutes a disguised form of price cutting in violation of our Unfair Sales Act, or whether they (trading stamps) are to be regarded as a discount for cash, as a means of advertising, a device to entice customers and to retain their trade, is new in this jurisdiction, and our decision on this matter will be one of first impression. It is a question upon which appellate courts, economists and accountants have diverse and conflicting opinions.

The question has, however, been considered by the courts of California and Utah, which states have statutes similar and comparable to ours in content and substantially identical to ours in purpose on unfair trade practices and fair trade contracts. See Cal. Bus. & Prof. Code, Fair Trade Contracts, Sec. 16900-16905, Unfair Trade Practices, 17000-[fol. 1194] 17100, and Food and Grocery Bureau v. Garfield, (Cal.) 125 P. 2d 3; Weco Products Co. v. Mid-City Cut Rate Drug Stores, et al. (Cal.) 131 P. 2d 856, and

cited cases. See also the Utah case, Trade Commission v. Bush, (1953) 259 P. 2d 304, and cited cases, and Utah statute cited in footnote of the case.

In the case of Food and Grocery Bureau v. Garfield, supra, there was no contention as herein that the use of the stamps resulted in sales of commodities below cost under the Unfair Sales Practices Act, but it was said in that case that "(I)t is well settled by the decisions of this Court, as well as other jurisdictions, that the practice of merchants in issuing trading stamps with the purchase of articles is merely a method of discounting bills in consideration for the immediate payment of cash." Citing cases.

In the California case of Weco Products Co. v. Mid-City Cut Rate Drug Stores, et al., supra, the question of price cutting or selling below cost was involved, and the factual situation was similar, if not identical, to the case herein, except that the latter case involved the Fair Trade Act and the case before us involves the Unfair Sales Practices Act which was true of the California case of Food and [fol. 1195] Grocery Bureau v. Garfield, supra, but the court made no distinction in the application of the cash discount rule to the Fair Trade and Unfair Sales Practices Acts. In the Weco Products Co. case, supra, it was said:

> "Defendant, even antedating plaintiff's availing itself of the protection of the Fair Trade Act, regularly gave to his customers trading stamps at the rate of one stamp with each ten cents of the sale price of articles purchased. These were given on purchases of any of the thousand and one things sold in defendant's drug stores, with the exception of liquors. At infrequent intervals there were 'double stamp days,' when two stamps were given for each ten cents of sale price. Upon each stamp was imprinted 'Cash Discount Stamp.' Each stamp had a cash value of two mills. Stamps were given to every customer paying cash at the time of purchase and requesting trading stamps. They were redeemed by defendant upon presentation of five hundred stamps collected in a book given by defendant to customers for that purpose, redemption

value for a book of five hundred being $1.00 cash or, at the option of the purchaser, $1.25 merchandise.

"Inasmuch as trading stamps were given by defendant upon sales of plaintiff's commodities, plaintiff contends that the scheduled minimum prices of his commodities were reduced by exactly the amount of the cash value of the stamps, to wit, by two mills upon each ten cents. In other words, plaintiff insists that the giving of trading stamps was in reality a disguised form of price cutting.

[fol. 1196] "The question before us for consideration, therefore, may be stated as follows: Does the giving of trading stamps, redeemable for cash or merchandise, constitute a violation of the Fair Trade Act when such stamps are given with commodities sold at the minimum prices stipulated by the producer under said Act? This query is best answered, we believe, by a consideration of the nature and purpose of the trading stamp coupons. Are they to be regarded as a discount for cash, as a means of advertising, a device to entice customers and to retain their trade, or do they simply represent a cut in the sale price of the articles with which they are given? If the latter, they accomplish a cut in the established price of merchandise; and where such merchandise is sold at minimum Fair Trade Act prices, the giving of trading stamps then amounts to a sale below such prices.

"If, however, the stamps are given by the merchant in the nature of an inducement to customers to attract them to his store, the practice is in the nature of an advertising device, and is no more to be condemned as violative the the Fair Trade Act than would be such commonly employed devices as free parking room, care of infants and other plans offered by some mercantile establishments in competition with their rivals. Free parking for automobiles of customers might be said to result in a lesser price paid by a customer for goods purchased, yet it could hardly be

reasonably contended that thereby a violation of the Fair Trade Act had been worked.

[fol. 1197] "Neither can it be asserted that by giving discounts for cash the terms of the statute in question are contravened. A cash discount is a reward for prompt payment. It is a trade practice long established, and is authoritatively recognized as being not a deduction from the purchase price. Montgomery, Auditing Theory and Practice, pp. 499-500.

"*Consideration of such authorities as are available leads us to the conclusion that the giving of trading stamps as in the instance now before us does not effect a reduction in the price of the articles sold such as to constitute a violation of the Fair Trade Act.* The matter has not been passed upon by the appellate courts of this State. *However, aside from the consideration of the Fair Trade Act, the status of trading stamps is definitely fixed in this state as being a discount for 'the immediate payment of cash.'* This pronouncement finds its latest expression in the case of Good and Grocery Bureau v. Garfield, 20 Cal. 2d 228, 125 P. 2d 3, 5, decided April 28, 1942, where the defendant is the same as in the instant case and where the very trading stamps here involved were under consideration. *It is true that the Food and Grocery Bureau case involved a different statute, the Unfair Practices Act rather than the Fair Trade Act, but the ruling of the court must be regarded as conclusive of the status of the trading stamp in commercial retail business.*

"*'It must be concluded,'* says the court in the Unfair Practices Act case, *'that the trading stamp plan adopted by the appellant * * * is a discount given the customer in consideration of his paying cash.'* And at page 6 of 125 P. 2d: *'It is well settled by the decisions of this court, as well as those in other jurisdictions, that the practice of merchants in issuing trading stamps with the purchase of articles is merely a method of discounting bills in consideration for the immediate payment of cash.'*

"This latter pronouncement is buttressed by numerous citations to decisions in California and other jurisdictions, where trading stamps are characterized as 'merely one way of discounting bills in consideration for immediate payment in cash,' Ex parte Hutchinson, C.C., 137 F. 950, 951; 'a benefit to the customer, who practically receives a discount, and who will buy more cautiously and judiciously if he pays cash,' Winston v. Beeson, 135 N. C. 271, 47 S. E. 457, 461, 65 L.R.A. 167, and 'a convenient means of allowing or granting a discount to the merchants' customers on small as well as on large purchases which were paid for in cash,' State v. Holtgreve, 58 Utah, 563, 200 P. 894, 897, 26 A.L.R. 696.

[fol. 1199] "To denominate appellant's trading stamp plan as a device for giving a discount for cash payment on merchandise, rather than as a cut in price upon the articles sold, gains force when we consider that the stamps are given uniformly and without regard to the type of goods sold or the purchaser of the same. The only condition is that cash be paid for the purchases. Respondent's 'Fair Trade' minimum-priced articles are not singled out by appellant as objects to which alone the trading stamp privileges attach. No discrimination is made for or against them. The policy may be said as to be of uniform application both as to goods sold and as to purchasers of the same, and logically falls into the classification of 'cash discount' rather than 'price cut.'" (Emphasis ours.)

The California rule as expounded in the above quotation holding that giving of trading stamps with purchases of merchandise sold at the minimum price under the Unfair Sales Practice Act is not a violation of the Act because the stamps represent a "cash discount" which, according to accounting procedure, is a cost of selling rather than a reduction in price, is a rule of long standing. In 105 Pa. L. Rev. 248, in discussing discounting procedures, it was said:

[fol. 1200] "While in the case of stamps a stronger argument may be made for treatment as a selling cost, since seller receives in cash the full list price regardless of the discount in stamps and must therefore account for the cash income as well as for his payment to the stamp company for the use of the stamps."

As early as 1904 in Ex parte Hutchinson, 137 Fed. 949, the Court, in nullifying anti-trading stamp legislation, said:

"... (T)he giving of trading stamps is merely one way of discounting bills in consideration for immediate payment in cash, which is a common practice of merchants, and is doubtless a popular method, and advantageous to all concerned, and it is not obnoxious to public policy. ..."

In the same year (1904) in Winston v. Beeson, 135 N. C. 271, 47 S. E. 457, the court in holding that the issuance of S & H stamps did not constitute a "gift enterprise" said:

"We can discern no practical difference between this arrangement of the parties and one by which the merchant agrees to discount his bills where cash is paid by his customer at the time of purchase, and the giving of stamps redeemable at a store of another in goods to be selected by the holder, instead of an actual discount by the merchant, does not in law vary the case or change the real and substantial character of the transaction. * * *"

[fol. 1201] In 1922, in the case of Sperry & Hutchinson Co. v. Siegle-Cooper & Co., 225 Ill. App. 540, aff'd 309 Ill. 193, 140 N.E. 864, (1923) in 225 Ill. at page 548, the court referred to the practice as follows:

"The practice of giving trading stamps to customers buying merchandise at retail constitutes a method of discounting the bills in consideration of prompt payment in cash. This is a common practice among merchants advantageous to all concerned. * * *".

In 1942 tje (sic) same rule was applied in Food and Grocery Bureau Inc. v. Garfield, supra.

In 1951 in Sperry & Hutchinson Co. v. Hudson, 190 Ore. 458, 226 P. 2d 501, the court said:

> "In a practical sense, the issuance of these trading stamps to cash customers is simply a method adopted for giving these purchasers a discount for cash. By the use of these stamps discounts are available on small purchases. As explained by the witness Shirer, vice president of plaintiff corporation: 'There is no coin small enough to give a discount of a ten or fifteen cent purchase.' By the issuance of one of these stamps for each ten cent purchase, such a discount is made possible."

[fol. 1202] In 1954 in Sperry & Hutchinson v. Margetts, 15 N. J. 203, 104 A. 2d 310, the court held that giving trading stamps was a form of discount for cash and "should be treated as a non-operating item, rather than as a deduction from sales price."

And as late as December of 1956, in Gever v. American Stores Co., 387 Pa. 206, 212, 127 A. 2d 694, the court said:

> "Viewed realistically, the giving of trading stamps may be regarded as nothing more than the equivalent of a normal cash discount, which is merely a term of payment and not a price reduction. Indeed, in a sense, the stamps have no value in themselves but acquire it only if the stipulated amount of other purchases is made. They cannot be regarded as cutting prices any more than free delivery service or free parking could be so regarded although these are practices which obviously save money for the customers of stores offering such advantages. Accordingly, the use of trading stamps, pursued as a general business practice by a commercial establishment, does not violate either the letter or the spirit of the Fair Trade Act."

Generally, the law of trade regulations has moved swiftly, and our statutes relating thereto are relatively

new; however, from an examination of our statutes and those of other states, together with appellate court decisions construing same, we conclude that the weight of law, logic and reason clearly and distinctly show that the practice of giving trading stamps in the usual customary manner does not amount to, nor will it sustain, a charge of price cutting.

[fol. 1203] The trial court did not err in refusing injunctive relief to force Speed, who was giving single trading stamps in the usual manner and in accord with a court order enjoining him from giving double stamps, to price his merchandise at statutory markup plus the value of the single stamps issued in the usual manner to the consumers, and we hold that the giving of such stamps did not constitute a price cut or unfair competition, but that such stamps merely constituted a discount for cash.

Therefore the judgment as to Speed is affirmed.

Concur: Welch, C.J., Corn V.C.J., and Davison and Carlile, JJ.:

Concur in Part and Dissent in Part: Halley, Williams, Blackbird, and Jackson, JJ.:

[fol. 1204] JACKSON, J.: CONCURRING IN PART AND DISSENTING IN PART:

Sales at retail below cost, as defined in the Act, are prohibited. 15 O. S. 1951, § 598.3.

Speed is selling, or giving, two articles for the price of one. Speed does not admit that this constitutes selling below cost nor does the majority opinion specifically so hold. Speed argues, and the majority agrees, that Speed is giving a discount for cash.

The Act does not authorize discounts for cash in retail sales. It does not authorize any scheme or device that would result in sales below "cost to the retailer." We are not dealing herein with sales at wholesale or by the manufacturer wherein discounts for cash appear to be authorized by § 598.2 (a) of the Act.

[fol. 1205] Insofar as material here § 598.2 (a) defines "cost to the retailer" in substance as invoice cost, plus freight, plus a 6 percent markup to cover a part of the cost of doing business.

Speed was selling items at "cost to the retailer" (Speed) but in addition was giving trading stamps to the purchaser. The stamps were valued at 2.5 percent. That is, if a pound of coffee cost Speed $1.00, as defined in "cost to the retailer", Speed was selling the coffee at $1.00 and giving the customer a stamp.

Even if it could be said that a cash discount by the retailer is authorized, the foregoing practice does not constitute a discount for cash in the ordinary acceptance or understanding of the term. A "discount for cash" ordinarily connotes a taking away, or reduction. The word "discount" is defined in Webster's New International Dictionary as follows:

> "Discount. 1. To deduct from an account, debt, charge, or the like; to make an abatement of; as, to discount a per cent of a bill or early payment."

[fol. 1206] In Black's Law Dictionary "Discount" is defined as follows:

> "Discount. In a general sense, an allowance or deduction made from a gross sum on any account whatever."

In Black's Law Dictionary "Cash Discount" is defined as follows:

> "A deduction from billed price which seller allows for payment within a certain time. Leonard v. U. S., Ct. Cl., 7 F. Supp. 295, 297."

Speed is not giving a discount for cash but is selling two articles for the price of one. Under the illustration above given Speed is selling a pound of coffee and a stamp for $1.00 which, together, cost One Dollar and Two and One-Half cents. This is contrary to an express provision of the Statute. § 598.2 (d) provides in substance that when one or more items are advertised or sold with

one or more other items at a combined price, or offered as a gift, or given with the sale of any one or more other items, each of said items shall be deemed to be advertised or sold, and the price of each item named shall be governed by the definition of "cost to the retailer."

[fol. 1207] We have been furnished extensive briefs citing decisions from other jurisdictions. Most of these decisions seem to be influenced by experts in the field of accounting and auditing. Experts in these fields testified in this case. Reasons which compel an accountant's conclusion do not compel the same legal conclusion. The issues are not the same. Accountants are concerned with auditing principles. We are concerned with the meaning of the Act as intended by the Legislature.

In my opinion the injunction against Safeway was proper. Safeway does not contend that it has a right to sell below cost. It does contend that it had a right to meet Speed's prices. § 598.7 of the Act authorizes a retailer to sell merchandise at a price made in good faith to meet the price of a competitor who is selling the same article at cost to him (competitor). Safeway was taking 2.5 percent from cost. Speed was adding or giving 2.5 percent above cost. But if it could be admitted that Safeway was meeting competition it was meeting unlawful competition. An illegal price on Speed's part would not authorize an illegal price on Safeway's part. This is one of the evils that the Act seeks to prevent.

[fol. 1208] For the reasons assigned, I respectfully concur in the order enjoining Safeway from selling below statutory cost and dissent to the opinion wherein it authorizes Speed to give stamps on articles sold at statutory cost.

I am authorized to say that Halley and Blackbird, JJ.: concur in the views herein expressed.

[fol. 1209] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLA

No. 37,326

SAFEWAY STORES, INCORPORATED, a foreign corporation, Plaintiff in Error,

v.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., a corporation, and LOUIE J. SPEED, INC., a corporation, Defendants in Error.

PETITION FOR REHEARING—Filed January 28, 1958

Plaintiff in Error, Safeway Stores, Incorporated, a corporation, respectfully represents to the Court that on the 24th day of December, 1957, a decree and judgment was rendered by this Court in said cause affirming the action of the trial court in granting a permanent injunction against Safeway Stores, Incorporated, and refusing to enjoin Louie J. Speed from giving trading stamps with articles sold at minimum prices, and that there is error in said decision as hereinafter appears:

1. The Unfair Sales Act as Construed and Applied in the Present Opinion Is Unconstitutional. Safeway raised this issue in its initial pleading. Paragraph 9 of its answer reads:

> "That the denial by the Court of the right of defendant to meet the competitive prices of the aforementioned members of plaintiff association, and others, would result in an unconstitutional application as to this defendant of the Oklahoma Unfair Sales Act, and would deny this defendant the equal protection of the laws under the Fourteenth Amendment of the Constitution of the United States, and would amount to the taking of its property without due process of law in violation of Article II, Section 7,

of the Constitution of Oklahoma, and the Fifth Amendment to the Constitution of the United States." (R. 61)

[fol. 1210] The same issue was squarely raised in this Court in paragraph 21 of the Petition in Error.

Safeway contends that the Unfair Sales Act, as applied and construed as to the transactions in question, is unconstitutional. Thus applied, the Act contravenes the due process and equal protection clauses of the Fourteenth Amendment, and takes its property without due process of law, in violation of Article II, Section 7, of the Oklahoma Constitution. While Safeway has not contended that the Act, on its face, is invalid, nevertheless the statute as applied and construed in the instant case, is clearly invalid.

The Act, as applied, violates the Federal and State due process clauses, in that it fixes an absolute minimum price for sales without any regard to the intents, purposes and results which attend these sales. An absolute bar to sales below a statutory minimum is unconstitutional. (*Englebrecht* v. *Day*, 208 P. 2d 538). The statute, as applied, is in the teeth of these constitutional requirements. Both the trial court and this Court applied the force of the Act to Safeway, with no regard to the required intents and results which are essentials for constitutional validity. The record is devoid of evidence to support any findings or conclusion against Safeway on these essential elements of the law. The overwhelming and undisputed proof of record is that Safeway reduced its prices solely to protect its business from the impact of trading stamps distributed by its competitors in Oklahoma City and to meet equally low prices of competitors in other towns. Where proof of sales below statutory cost are made prima facie evidence of intent to injure competitors and the Act is interpreted to mean that it can only be rebutted by proof of a narrow statutory exception, the presumption becomes so unreasonable as to deny due process. By construing the Act to allow Safeway's competitors to sell their merchandise for 2½% less than Safeway, through the giving of such value in trading stamps, and by denying Safeway the right to

make sales at a competitive level, the statute, as applied, deprives Safeway of the equal protection of the laws.

In the case of *Adwon* v. *Oklahoma Retail Grocers Association,* 228 P. 2d 376, these issues are not disposed of and the Court has misinterpreted Safeway's position in this regard.

2. The Court Erred in Holding That the Exception Provided in Section 598.7 Is Exclusive. This exception is available to a litigant only in those cases where competitors are selling at or above statutory cost. This was not the situation in this case and Safeway could not and did not rely upon this exception. Safeway's position on this issue is set forth in paragraph 3 of its Answer, and reads as follows:

> "* * * Defendant denies that the advertisement, offer for sale or sale of such articles was in violation of the Oklahoma Unfair Sales Act and alleges that the [fol. 1211] prices of said items were made by defendant, in good faith, to meet the prices of a competitor or competitors of defendant who were, on the dates complained of, selling the same articles or products of comparable quality at such prices."

This is the same defense pleaded by defendant in *Perkins* v. *King Soopers, Inc.* (Colo. 1950) 221 P. 2d 343 (See page 344). The State argued in that case that since sales below cost were admitted that the only defenses available to defendant were the statutory exceptions which included the proof that its competitors' prices were "legal." The court said the question was whether a statute could create a presumption of intent to injure competitors from proof of sales below cost and could set up a narrow and exclusive manner by which it can be rebutted. The Court answered this question in the negative:

> "To the extent that the statute might indicate a limitation upon the right of the defendant in error to prove its actual intent, it is unconstitutional as violative of due process of law."

The purpose of Section 598.7 is to relieve one who would otherwise be guilty of an offense. An offense includes sales below cost *with the intention of injuring a competitor and resulting in damage to a competitor.* A mere sale below cost is not an offense and one who makes it, need not rely upon this exception in the statute. The Court's attempt to make the exception an exclusive defense is an unconstitutional application of the law.

Conversely, the wrongful intents, purposes and results set forth in the statute *are exclusive* and they do not include sales below cost made to meet the equally low prices of competitors or to meet the value of trading stamps.

Although the majority relies upon a case by the intermediate appellate court of California in determining the trading stamp issue, they have overlooked the decision of the Supreme Court of that State on this issue. In *People* v. *Pay Less Drug Store,* (Calif. 1944), 153 P. 2d 9, the Court held that the Unfair Sales Act was constitutional because the statutory exception of meeting legal prices of competitors was not exclusive. The Court held that the defendant had the alternative of (1) showing that it came within the express exception *regardless of actual intent,* or (2) introducing evidence of *another purpose not expressly included in the Act.* The second alternative includes the right to show that the price reductions were made to meet the equally low prices of competitors (see other California cases cited in Paragraph 3 below).

At page 5 of the present opinion, the Court cites the recent case of *State* v. *Wolkoff,* (Minn. 1957), 85 N. W. 2d 401, as supporting the view that only legal prices may be met. The majority misinterprets that case. The defen- [fol. 1212] dant *Wolkoff* was in the same position as Safeway, in that it could not show that competitors' prices were legal. The Court held that this was immaterial because the fact that *Wolkoff* reduced its prices for the purpose of meeting competition, including trading stamps, *"would fairly negate any claim that the prices were established to injure competitors."* (p. 407-408)

In the long course of briefing and rebriefing this case, the Association has not been able to present a single case holding that a merchant cannot remain competitive even in

the face of sales below cost. The Association urges instead the dictum in *Federal Trade Commission* v. *Staley Mfg. Co.*, 324 U. S. 746, 89 L. Ed. 1338, in the related field of Robinson-Patman.

The language of that case is explained in *Standard Oil Co.* v. *Brown* (U.S.C.A. 5th, 1956), 238 F. 2d 54. In *Standard Oil Co.* v. *Federal Trade Commission*, 340 U. S. 231, 95 L. Ed. 239, the Court held that the right of self-defense had not been curtailed by that Act.

In *Balian Ice Cream Co.* v. *Arden Farms Co.*, (U.S.C.A. 9th 1956), 231 F. 2d 356, it was held that defendant had the right to reduce its prices to offset the illegal practices of plaintiffs. The Supreme Court denied certiorari. (100 L. Ed. 856).

If the present opinion is finally approved, it will stand alone on that question.

3. The Court Has Erroneously Interpreted the Act as Forbidding all Sales Below Cost Regardless of the Intents, Purposes and Results Which Attend These Sales. The Act only condemns sales below cost made with the intent and purpose of injuring competitors and the Courts have uniformly held that any motivating purpose other than those set forth in the Act are lawful.

In *Olin Mathieson Chemical Corporation* v. *Francis*, (Colo. 1956), 301 P. 2d 139, the Court held the Fair Trade Law of Colorado unconstitutional. The Court approved their former holding in *Perkins* v. *King Soopers, Inc.*, supra and at page 146 said:

> "There it was claimed that King Soopers, Inc. sold certain merchandise below cost, with intent to injure its competitors under the Unfair Sales Act, C.R.S. '53, 55-2-3. The plaintiff contended that it was not necessary to prove intent. It was held, however, that intent had to be proved, otherwise, the legislation would be a flat fixing of prices, without regard to the public welfare."

In *Wiley* v. *Sampson-Ripley Company* (Me. 1956), 120 Atl. 2d 289, the plaintiff made a prima facie case by proof of sales below cost, but defendant proved that it intended

no injury to a competitor and reduced prices to make friends and create goodwill.

[fol. 1213] At page 291, the Court said:

> "The purpose was legitimate and is not covered by the Unfair Sales Law. It is a practice resorted to by merchants from time immemorial and recognized as proper by the courts and business generally. Where attempts have been made, as we have seen before in this opinion, to prevent it by legislation, such laws have been declared unconstitutional."

In *State* v. *20th Century Market* (Wisc. 1940), 294 N. W. 873, the defendant made sales below cost "to anticipate and meet competition." The Court held that it need not determine the constitutionality of the Statute because sales made for this purpose were not condemned by the Act.

The California cases are to the same effect. (*Balzer* v. *Caler*, 74 P. 2d 839, and *Ellis* v. *Dallas*, 248 P. 2d 63).

4. The Statutory Remedy of Injunction Is Neither Adequate Nor Exclusive. There are many reasons why the statutory remedy of injunction may not be adequate. Competitors may be selling below statutory cost without violating the law because they do not intend to injure a competitor. If they do not so intend, then their acts are lawful, but the effect upon competitors may be the same as if they had harbored the sinister motives condemned by the Act. The only adequate remedy under these circumstances is to meet these prices in order to protect one's trade. Regardless of the adequacy of the remedy, however, no authority will be found to sustain this Court's judgment that the remedy was intended to be exclusive and must be resorted to instead of exercising self-defense. The right of a seller to lower his price in good faith to meet the equally low price of a competitor in the sale of goods of like grade and quality, is, in reality, the right to compete. (*Balian Ice Cream Co.* v. *Arden Farms Co.*, 104 F. Supp. 796). The statutory remedy of injunction is not an adequate substitute for the right to compete upon equal terms with others in the same market.

The author of 42 Harv. L. R. 693, cited by the majority in support of this portion of the opinion, does not hold that

the statutory remedy is exclusive but merely argues that the remedy will serve to reduce competitive prices which are below cost. This Court has inadvertently adopted the pious argument of the Association and misuse of the statement that no one has the right to take the law into its own hands. This argument assumes that mere sales below cost are unlawful and Safeway was violating the law when it reduced its prices. This is an unconstitutional application of the law, because it ignores the essential elements of intents, purposes and results which this Court has so carefully delineated in its former decisions. (*Englebrecht* v. *Day* and *Adwon* v. *Oklahoma Retail Grocers Association*, supra). In *Balian Ice Cream Co.* v. *Arden Farms Co.*, 104 F. Supp. 796, 231 F. 2d 356, cert. denied 100 L. Ed. 856), the defendant Arden was faced with sporadic price reductions [fol. 1214] and rebate practices by its competitors in the Los Angeles area. *Arden* could have enjoined these practices because some were admittedly illegal (15 U.S.C.A. 26). *Arden* elected to meet this competition by lowering its prices. This caused *Balian* and others to lose business and they brought suit under the Robinson-Patman Act. *Arden* defended upon the ground that its prices were not made to injure competitors but to protect its business against the unreasonably low prices of plaintiff and other competitors. Plaintiffs argued that some of their own practices were illegal and, therefore, *Arden* could not justify its actions on this basis. This is the argument made by the Association here, that one violation does not justify another. In answer to this, the Court of Appeals in 231 F. 2d 356, at page 367, said:

> "* * * Even if it were shown that Arden undercut the prices of poorer quality products, it would not be unfair if the general purpose were to eliminate improper rebates and special concessions made by its competitors. *Plaintiffs seem to urge as a defense that the prices which they were charging and the concessions which they made were in some instances illegal, but that, notwithstanding this fact, Arden could not fight against these by making a blanket cut on all ice cream sold in the area.* But it is well established that

'Congress did not seek by the Robinson-Patman Act either to abolish competition or so radically to curtail it that a seller would have no substantial right of self-defense against a price raid by a competitor.'"

While the foregoing does not specifically hold that the injunctive remedy is not exclusive, it does hold that the remedy of self-defense is available even where the competition is illegal and even in those cases where the statute affords the remedy of injunction. All parties to this litigation acknowledge that the Unfair Sales Acts were patterned after the Robinson-Patman Act and this would, therefore, seem to be controlling.

5. Trading Stamps Reduce the Price of Merchandise With Which They Are Distributed to the Extent of the Value of the Stamps. The Act contains certain exceptions, but "cash discounts" are not among them. No distinction will be found in the Unfair Sales Act which will permit the cash merchant to sell for a lower price than that of the credit store. Unless a legislative intent can be found to distinguish between cash and credit, the argument that cash discounts are permissible, upon articles otherwise priced at the minimum permitted by law, breaks down completely because the cash discount is ostensibly given in lieu of credit. We find no such distinction in the Act and do not believe it can be seriously contended that the distinction is there. (*Bristol-Myers* v. *Picker*, 89 N.Y.S. 2d 215, 96 N. E. 2d 177).

The majority relies upon two general classes of cases. The first category is cases which antedated the minimum [fol. 1215] price laws and deal generally with attempts to abolish stamps or to tax them out of existence. The nature of the trading stamps was, therefore, unimportant in those cases, and the Court's reference to them as a form of cash discount is obiter dicta. The second class of cases deal with minimum price laws, but do not contain the weight of law, logic and reason on this issue. The majority has approved the decision of an intermediate court from California in *Weco Products Co.* v. *Mid-City Cut Rate Drug Stores*, 131 P. 2d 856, which is demonstratively wrong because it relies upon an antequated theory of accounting

which was at one time advocated by the author Montgomery. By the time that case was decided, Montgomery no longer held those views, but, on the contrary, Montgomery and the other leading authorities in the field of accounting and economics had discovered their error and were treating cash discounts as a price inducement. These authorities are now in substantial agreement that the true effective price is the net amount after the cash discount has been deducted. In the *Weco* case, the Court said that trading stamps could be compared with free parking, care of infants and other fringe benefits commonly offered by merchants to customers. That argument was made to the highest appellate court in New York in the case of *Bristol-Myers* v. *Picker*, 96 N. E. 2d 177, in answer to which the Court said:

> "These other types of service have no direct relation to the article purchased or the price paid. They are completely separated and too remote from the pricing element to come within the statutory prohibition. Here the benefit to the customer is directly, proportionately, inseparably and specifically related to the article purchased and its price * * *
>
> "No matter how one puts it, the customer who is accorded a cash discount in reality pays that much less for the article which he purchases, and this is nonetheless true, because the return is by way of merchandise rather than coin which may purchase merchandise."

We do not see how the majority could conclude that an inferior court in California carries the same weight as the highest Court of New York. The *Weco* case is wholly lacking in logic when it adopts a theory of Montgomery which he no longer subscribes to and it applies faulty reasoning when it equates intangible fringe benefits like free parking to trading stamps which can be exchanged for merchandise.

6. Trading Stamps Are Advertised, Offered for Sale and Sold as a Part of a "Tied Sale" and Must Bear the Statutory Markup Like Any Other Item. The dissenting

opinion properly holds that trading stamps, as described in this record, constitute a part of a "tied sale," and the authorities cited by the majority support this view. The majority opinion cites and quotes from the dictum in *Sperry* v. (sic) *Hutchinson Co.* v. *Siegel-Cooper & Co.*, 225 [fol. 1216] Ill. Appl. 540, but the first syllabus in that case reads:

> "Trading Stamps—as representative of property right. Trading stamps issued by a retail mercantile establishment and redeemable in merchandise or cash are not mere gratuities *but represent a property right of a definite pecuniary value, which has been bought and paid for by the customer collecting them.*" (Italics ours)

This was one of the principal issues in the case to which counsel on both sides devoted substantial portions of their briefs, and yet the majority of this Court have ignored the issue in its entirety.

State v. *Dalton* (R. I. 1900), 46 Atl. 234, is the leading case holding that trading stamps cannot be prohibited by statute. At page 237, the Court said:

> "* * * *This is equivalent to declaring that it is illegal for a man to give away one article as a premium to the buyer for having purchased another;* * * *"

In *State* v. *Lynch* (Okla. 1943), 137 P. 2d 949, and again in *Commonwealth Life Insurance Co.* v. *Miles* (Okla. 1944), 145 P. 2d 964, this Court held that where a purchase is a condition precedent to the receipt of another item, that both are paid for by the purchase price. This fundamental fact does not change simply because stamps are delivered to the purchaser which are exchangeable for merchandise. (*Sperry & Hutchinson Co.* v. *Hertzberg*, 60 Atl. 368).

We respectfully submit that the foregoing authorities, together with those cited in the brief attached hereto, contain the weight of law, logic and reason on the six principal issues in this cause. We also submit that the present opinion misstates Safeway's position on the con-

stitutional issue and the exception found in Section 598.7 of the Act. The majority has overlooked the essential elements of intents, purposes and results provided in the statute, together with the tied sales provision, and a complete disposition of this case requires that these issues be determined.

Respectfully submitted,

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[fol. 1217] Certificate of Service (omitted in printing)

[fol. 1218]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 37,326

SAFEWAY STORES, INCORPORATED, a foreign corporation, Plaintiff in Error,

v.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., a corporation, and LOUIE J. SPEED, INC., a Corporation, Defendants in Error.

BRIEF OF SAFEWAY IN SUPPORT OF PETITION FOR REHEARING—Filed January 28, 1958

I. The Constitutional Question.

At page 3 of the opinion, it is said:

"Safeway contends that the Unfair Sales Act is violative of certain provisions of the Oklahoma Constitution and the Constitution of the United States. However, the constitutionality of the Unfair Sales Act,

as amended, after Englebrecht v. Day et al., 201 Okl. 585, 208 P. 2d 538, was upheld in Adwon v. Oklahoma Retail Grocers Association, Inc., 204 Okl. 199, 228 P. 2d 376. Therefore, the constitutional questions herein raised, *being substantially the same as in the Adwon case,* supra, we deem it unnecessary to consider the issue of the constitutionality of the Unfair Sales Act in the instant case." (Italics ours)

Safeway does not contend that the Unfair Sales Act, if properly interpreted, violates the Oklahoma or the Federal Constitutions, but it does contend that both this Court and the trial court have interpreted it in a manner which renders it unconstitutional.

In *Englebrecht* v. *Day,* 201 Okl. 585, 208 P. 2d 538, this [fol. 1219] Court held the former act unconstitutional per se because it attempted to make sales below statutory cost, a violation of law if accompanied by certain specific intents *or* these sales had certain specific effects. The Court properly held that since this was couched in the alternative that a person could be held guilty of violating the law if the sales had the specific effects even though he did not intend any harmful results and this would be violative of the "due process" clauses of both the State and United States Constitutions.

As a result of the decision in *Englebrecht* v. *Day,* the Unfair Sales Act was amended by couching the intents and effects provision in the conjunctive, and this Court, in the case of *Adwon* v. *Oklahoma Retail Grocers Association, Inc.,* 204 Okl. 199, 228 P. 2d 376, held that since the amendment made both the specific intents and specific effects essential elements of an offense, that the constitutional defect in the prior law had been remedied.

Safeway contends that these two decisions mark the constitutional limitations of this law, and if the Courts require the plaintiff to prove these essential elements as dictated by the *Adwon* case, then there is no constitutional problem involved. Conversely, there is an unconstitutional application of the law if the Court ignores the essential elements of wrongful intent and damaging results and attempts to make mere sales below cost an offense under the law.

Section 598.3 defines the offense as follows:

> "It is hereby declared that any advertising, offer to sell, or sale of any merchandise, either by retailers or wholesalers, at less than cost, as defined in this Act with the intent and purpose of
>
> (1) inducing the purchase of other merchandise, or of
>
> (2) unfairly diverting trade from a competitor or
>
> (3) otherwise injuring a competitor,
>
> (4) impair and prevent fair competition,
>
> (5) injure public welfare,
>
> are unfair competition and contrary to public policy and the policy of this Act, where the result of such advertising, offer or sale, is to tend to
>
> (1) deceive any purchaser or prospective purchaser, or to
>
> [fol. 1220] (2) substantially lessen competition, or to
>
> (3) unreasonably restrain trade, or to
>
> (4) tend to create a monopoly in any line of commerce."

There are five specific intents and purposes condemned by the Act, but they do not include the *intent and purpose of meeting the prices of a competitor, whether the competitor's price is above or below statutory cost.* There are four specific results condemned by the Act. One of the specific intents must cause one of the specific results to make sales below cost actionable.

Safeway did not intend to (1) induce the purchase of other merchandise; (2) unfairly divert trade; (3) injure a competitor; (4) impair fair competition, or (5) injure the public welfare. The only evidence on the question of intent shows that Safeway's prices were made *for the purpose of meeting the equally low prices of its competitors and to offset the value of trading stamps.*

These intents and purposes are not inhibited by the Act but are separate and apart from those motives which the Legislature condemned. If the Court permits the injunction against Safeway to stand it must ignore the constitutional requirements which have been so carefully delineated in former decisions (*Englebrecht* v. *Day, Adwon* v. *Oklahoma Retail Grocers Association*), supra.

In *Wiley* v. *Sampson-Ripley Company,* (Me. 1956), 120 A. 2d 289, the Court, being confronted with the same problem, said:

> "Under this law the plaintiff was required to make out no more than a prima facie case. This was done and the plaintiff rested. The defendant by necessity was forced to offer a defense and explain the purpose and reason for the sale. This was the only evidence as to what motivated the defendant's action and was not contradicted. *The defendant's position is that the sale was not made to injure competitors or destroy competition, and its purpose was to make friends and create good will.*
>
> *"The purpose was legitimate and is not covered by the Unfair Sales Law.* It is a practice resorted to by merchants from time immemorial and recognized as proper by the courts and business generally. *Where attempts have been made, as we have seen before in this opinion, to prevent it by legislation, such laws have been declared unconstitutional."* (Italics ours)

[fol. 1221] If a Court adds any additional intents, purposes or results not mentioned in the statute, this is judicial legislation, and if a Court convicts, in the absence of proof of these intents, purposes and results, there is an unconstitutional application of the law.

II. The Exception Provided in Section 598.7

At page 4 of the present opinion, it is said:

> "Safeway contends that it was not and is not amenable to injunctive restraint from admittedly selling

merchandise below the statutory cost under the Unfair Sales Act, 15 O. S. 1951, Sec. 598.3, because under Section 598.7 of the Act it had the right to advertise, offer to sell, or sell merchandise at a price made in good faith to meet the price of a competitor who was selling the same article or products of comparable quality at cost to it as a retailer. It seeks to justify its price cutting action on the ground that when its competitors gave trading stamps, cash register receipts or things of like nature of such value with their sales of merchandise, which in effect reduced the price of their merchandise below minimum cost, that that constituted sales below cost or price cutting in violation of the Unfair Sales Act, and that it had a right to meet such competition by reducing its prices to the extent of the value of the trading stamps.

"In other words, Safeway contends that its action was justifiable because of the alleged wrongful acts of its competitors, and that its actions in the premises constituted 'good faith' in accord with Sec. 598.7, which exempted it from the injunctive provisions of Sec. 598.5 of the Unfair Sales Act. We do not agree."

The foregoing misstates Safeway's position on this issue and perpetuates the error of the trial court. Safeway has never contended that its prices were justified by Section 598.7 of the Act. The trial court held that this was the only defense available to Safeway, but the law is to the contrary and this was the principal reason for the appeal to this Court.

The Association tried to place Safeway in this indefensible position before this Court, and in order to make its position clear Safeway said in its brief:

"Safeway has never relied upon this section of the [fol. 1222] statute as a defense to the action against it." (Reply brief p. 9).

Title 15 O. S. 598.7 is an exception to the law and reads in part as follows:

"Any retailer or wholesaler may advertise, offer to sell, or sell merchandise at a price made in good faith

to meet the price of a competitor who is selling the same article or products of comparable quality at cost to him as a wholesaler or retailer. * * *."

This is an affirmative defense which a defendant may or may not desire to urge depending upon the facts of the case. It was not available to Safeway in this case because its competitors were selling below cost, but the question arises as to whether this Court is going to follow the trial court's decision in holding that this is the only defense open to Safeway.

In *Perkins* v. *King Soopers, Inc.*, (Colo. 1950), 221 P. 2d 343, the Court held that any attempt to make this defense (Sec. 598.7) exclusive would be unconstitutional.

"In the instant case, defendant in error denied any unlawful intent. The trial court did not err in permitting it to prove the actual intent animating the admitted sales below cost by any evidence relevant to that subject, *notwithstanding anything in the statute to the contrary. To the extent that the statute might indicate a limitation upon the right of the defendant in error to prove its actual intent, it is unconstitutional as violative of due process of law.*" (Italics ours)

In *People* v. *Pay Less Drug Store*, (Calif. 1944), 143 P. 2d 762, *Pay Less* Drug defended upon the ground that its prices were never lowered until one of its competitors established an equally low price. The Court held that if this were true it would constitute a complete defense regardless of whether its competitors' prices are legal.

"Appellants urge that these advertisements demonstrate that all of their sales below cost were made to meet the advertised prices of competitors. *If these exhibits did show, as contended by appellants, that their sales below cost occurred at or shortly after the time competitors advertised the same article at the price at which appellants sold, we think this would establish appellants' defense.*" (Italics ours)

[fol. 1223] The difficulty with the position of *Pay Less* was that the evidence showed that the prices of its competitors were too far removed in time to justify its reductions below cost. In the case at bar this question is covered by stipulation (R. 449-450). The stipulation shows that Safeway's reductions were made on the same items, in the same towns and at the same time. It follows that under the California decisions this would constitute a complete defense.

The *Pay Less* case was appealed to the Supreme Court where defendant argued that the Legislature had attempted to make the exception of meeting legal prices of competitors exclusive and the Act was, therefore, unconstitutional. In 153 P. 2d 9, at page 12, the Court carefully points out that it is not an exclusive defense but that defendant may show that its price reductions were made because of business necessity and not to injure competitors.

> "The obvious and only effect of this provision is to require the defendants to go forward with such proof as would bring them within one of the exceptions or which would negative the prima facie showing of wrongful intent. They may present facts showing that they were within the *express exceptions regardless of actual intent; or they may introduce evidence of another necessity not expressly included to show that sales were made in good faith and not for the purpose of injuring competitors or destroying competition.*" (Italics ours)

In the present case, Safeway did not rely upon the statutory exception but "introduced evidence of another necessity," not condemned by the Act, to show that the sales were not made for the purpose of injuring competitors. This is a complete defense under all of the decisions on the subject and one which this Court has overlooked in the present opinion.

The California decisions which the majority follows on the stamp issue are explicit on this question, as well as those of Colorado where the Court cites and follows *Englebrecht* v. *Day* and *Perkins* v. *King Soopers, Inc.*), supra.

III. The Intents, Purposes and Result Provisions of the Act.

Since Safeway did not rely upon the exception contained in Section 598.7, it must be eliminated from the consideration of this case unless the Court believes that this affirmative defense is exclusive and the only one available to the defendant. The trial court believed that it was, but, as previously pointed out, this construction would render the [fol. 1224] Act unconstitutional. (*Perkins* v. *King Sooper Inc.*) supra.

In August, 1956, the Colorado Court reviewed its former decisions on this subject. In *Olin Mathieson Chemical Corporation* v. *Francis*, 310 P. 2d 139, at page 146, the Court said:

> "* * * There it was claimed that King Soopers, Inc. sold certain merchandise below cost, with intent to injure its competitors under the Unfair Practices Act, C.R.S. '53, 55-2-3. The plaintiff contended that it was not necessary to prove intent. *It was held, however, that intent had to be proved, otherwise the legislation would be a flat fixing of prices, without regard to the public welfare.* * * *" (Italics ours)

This is, of course, in keeping with the uniform rule that mere sales below cost are meaningless, and the Legislature is powerless to prevent a merchant from selling at a price of his choice unless he does so with a guilty state of mind, intending to injure a competitor, and the sales actually accomplish this result. (*Englebrecht* v. *Day*).

These sinister purposes and damaging results are expressed in slightly different terms in the various acts, but with striking similarity. We do not agree with the implication in the majority opinion that there is anything unique about the Oklahoma Act, as it was carefully patterned after those of other States where the legislation had been held constitutional (*Adwon* v. *Oklahoma Retail Grocers Association*). While this Court is not bound by the decisions of other Courts, it should re-examine this question in the light of what other Courts have held under the same state of facts.

In *Miller's Grocerteria* v. *Food Distributors* (Colo. 1941), 109 P. 2d 637, defendant reduced prices below cost *to attract attention to the opening of a new store,* and the Court held this was a complete defense.

The *Miller* case was expressly approved in *Perkins* v. *King Soopers, Inc.* (Colo. 1950), 22 P. 2d 343.

In *State* v. *20th Century Market,* (Wisc. 1940), 294 N. W. 873, the reductions were to meet competition and conserve the capital investment of defendant. It was held no offense was committed.

In *Balzar* v. *Caler,* (Calif. 1937), 74 P. 2d 839, the defendant sold below cost *to meet the competition of others and in order to stimulate his own business.* On appeal, the Supreme Court held that this evidence rebutted any presump-[fol. 1225] tion of wrongful intent. (82 P. 2d 19).

In *Ellis* v. *Dallas,* (Calif. 1952), 248 P. 2d 63, the defendant sold below cost to increase his own volume, which the Court held was not illegal.

In *People* v. *Pay Less Drug Store* (Calif. 1944), 153 P. 2d 9, the Court held that *any necessity not specifically condemned by the Act, including the meeting of below cost prices of competitors* was a complete defense.

The same rule has long been established in Oklahoma. In *Western Lumber Co.* v. *State,* (Okla. 1920), 189 Pac. 868, the criminal court of appeals held that different prices in different areas of the State made to meet local competition were not with the intent or purpose of destroying competition.

In *Ben Hur Coal Company* v. *Wells* (U.S.C.A. 10th 1957), 242 F. 2d 481, the Court, at page 486, said:

> "We cannot say, however, that a pricing policy based upon sound economics is inadmissible simply because it may result in the destruction of a competitor, for it is not within the scope or purpose of the antitrust laws to protect a business against loss in a competitive market. Balian Ice Cream Co. v. Arden Farms, supra, at p. 801. *One who reduces his prices in defense of his economic life cannot be guilty of eliminating competition or his competitors.* * * * " (Italics ours)

The most recent case on the subject is *State* v. *Wolkoff* (Minn. 1957), 85 N. W. 2d 401. At page 5 of this Court's opinion this case is referred to as one involving "legal prices," but we respectfully submit that this is in error. On the contrary, the State of Minnesota made the same argument that the Association makes here, and the Court held that the argument was invalid.

At the trial, *Wolkoff* introduced evidence of advertisements by his competitors showing their equally low prices and the fact that a part of them were giving trading stamps. The State objected because Wolkoff could not show that the prices of his competitors were legal and, hence, could not bring himself within the statutory exception. (Sec. 325.06(4) of the Minn. Law, and Sec. 598.7 of the Okla. law). The Court reviewed most of the cases heretofore cited on this question and held:

(1) The statutory exception of meeting legal prices is not exclusive;

(2) Sales below cost are only actionable where accompanied by the specific intents and results condemned by the statute;

[fol. 1226] (3) To hold otherwise would render the statute unconstitutional;

(4) That the proof of any purpose, except those condemned by the statute constituted a complete defense;

(5) That the State must show some substantial damage to a competitor;

(6) That if competitors are charging equally low prices that they cannot be damaged by having defendant meet them, and

(7) Where defendant's prices are made to meet the illegal prices of his competitors and to offset the trading stamp plans of competitors there is no violation of law because these purposes are not condemned in the statute but on the contrary serve to negate any wrongful purpose or damaging result.

The following excerpts from the opinion show the basis of the Court's decision.

"Furthermore, plaintiff's entire argument appears to be based on the assumption that this section prevents the introduction of competitor's prices in all instances, for all purposes, unless there is the required foundation set forth in this section. Again, we cannot agree. Even if such evidence were inadmissible as a defense under Sec. 325(4) insofar as it relates to defendants' meeting of competitor's prices, this does not render its admission fatal where it may be properly admitted for another purpose.

"From a review of the record, it appears that the defendants' theory in introducing this evidence was much broader than merely supporting a claim that they were meeting competitor's prices. As previously mentioned, part of this evidence was directed to showing the high competitive features of defendant's trade area. The defense also contended that it was customary to set prices on the basis of what competitors were charging for the same items, *and that their 'purpose' in setting these prices was not injury to competitors or destruction of competition but rather actual business survival as well as a type of promotion and advertising to counter-act the giveaway and trading stamp schemes of certain competitors.* These contentions, if believed, would fairly *negate* any claim that the prices were established to injure competitors or destroy competition. * * * (Italics ours)

[fol. 1227] "Furthermore, it is apparent that the defendants also introduced this evidence to show that their prices did not have the effect of injuring competitors or destroying competition. Plaintiff alleged in the complaint that the defendants' sales under cost were made for the purpose or had the effect of injuring competitors and destroying competition. Proof of either 'purpose' or 'effect' would warrant a finding of violation. Thus, defendants were entitled to introduce evidence tending to show that their acts did not have the effect claimed. *The fact that competitors*

were charging the same or lower prices for a reasonable time before and after the alleged violations was valid evidence that the defendants' prices did not, and even could not, have the effect of injuring such competitors or destroying competition in the market involved." (Italics ours)

In addition to the intents and purposes required by the Act, the Minnesota Court was also concerned with the essential element of damaging results. The statement that,

"* * * defendants' prices did not, *and even could not,* have the effect of injuring such competitors or destroying competition in the market involved."

is, we believe, an important one and states a principal which this Court has failed to consider. It is axiomatic that the meeting of a competitor's lower prices increases competition and does not lessen it. It also follows that if the reduction does not go below those of competitors that there will be no diversion of trade or damage done. Equality in price, of necessity, removes the possibility that any competitor will be damaged by the lower prices of a competitor or that a ruinous price war might take place. It is only when one merchant elects to destroy the price structure, by leading the market down, that the possibility of damage exists.

When damage to a competitor is an essential element of an offense, it cannot be presumed from other facts but must be proved. (*Enterprise Industries* v. *Texas Company,* 240 F. 2d 457).

IV. Injunction Against Competitors As An Exclusive Remedy

At page 4 of the present opinion, this Court said:

"* * * We must construe and interpret the Unfair Sales Act so as to give it practical meaning and effect within the legislative intent. However, until a proper [fol. 1228] factual case is presented which requires a clear determination and offers a practical situation in which all the conflicting problems and considerations

of the area involved are apparent, this court will refrain from theorizing. This is particularly true in cases involving the field of economic regulation. The eventual goal of any interpretation must be viewed in the practical situation existing in the field to be regulated."

The foregoing was taken from *State* v. *Wolkoff*, (Minn. 1957), 85 N. W. 2d 401, at page 410. After stating their duty in this manner, the Minnesota Court found that the defendants' prices made to meet the equally low prices of competitors and the impact of trading stamps did not violate the Act. The factual situation in the *Wolkoff* case cannot be distinguished from the case at bar, and, after a thorough review of the authorities, that Court concluded that price reductions, made to meet competition, were not condemned by the Act and if competitors were selling at the same price, *Wolkoff's* prices *could not* damage them. The Court said:

"These contentions, if believed, would fairly *negate* any claim that the prices were established to injure competitors or destroy competition * * * "

"The fact that competitors were charging the same or lower prices for a reasonable time before and after the alleged violations was valid evidence that the defendants' prices did not, *and even could not*, have the effect of injuring such competitors or destroying competition in the market involved." (Italics ours)

These conclusions were not reached on the basis that the prices of Wolkoff's competitors were legal, but on the contrary assumed that he was meeting illegal prices.

The Minnesota Court said that it was not necessary or proper for them to establish a rigid standard, but, at the very least, some substantial damage to competition had to be shown in order to sustain a violation of the Act.

This is the frame of reference in which the Minnesota Court used this language and must be contrasted with this Court's adoption of it. The present opinion makes no reference to the essential elements of wrongful intent and

damaging results, but treats mere sales below cost, as a violation of the Act. The Court may feel that this is a practical approach to the economic problem, but it is an unconstitutional one and contrary to the previous decisions of this Court. (*Englebrecht* v. *Day* and *Adwon* v. *Oklahoma Retailers*), supra.

[fol. 1229] In addition to this, however, and after stating that it will "refrain from theorizing" in the field of economic regulation, the Court lays down a new legal principle based entirely upon theory. During the trial and in the briefs, Safeway challenged the Association to produce any authority for the argument that the statutory remedy of injunction is exclusive and deprives a merchant of the right of self-defense. The Association was unable to find any authority to support this argument and yet this Court has adopted it because "commentators have observed the wisdom of the Legislatures in providing the remedy."

These commentators do not suggest that the Unfair Sales Act deprives a merchant of the right of self-defense, but merely state that to the extent the statutory remedy is used that it will have a deterring effect upon price reductions to meet competition. None of the articles except *10 So. Calif. L. Rev.* 22, deal with the Unfair Sales Act, but, on the contrary, involve the right of a court of equity to grant an injunction where the Act complained of constitutes a crime. Injunction was generally denied in these cases until the famous Eugene Debbs decision (158 U. S. 564). A Texas Court enjoined the operation of a lottery by a competitor and this gave rise to the note appearing in *24 Harv. L. Rev.* 693. On the other hand, the New Jersey Court in *Healy* v. *Sidone*, 127 Atl. 520, refused to enjoin the operation of a bus line without a permit at the instance of a competitor. This decision is criticized in *25 Cal. L. Rev.* 1088. Later, the Texas Court refused to enjoin the operation of a business on Sunday because it was a violation of the criminal code. The author in *13 Tex. L. Rev.* 136, merely approved the Harvard Law Review, stating that it is a new doctrine not yet completely accepted.

The principle has long since been accepted by most Courts (43 C.J.S. p. 762), but the arguments made by these

writers that a court of equity should make the remedy available, to one whose property rights are damaged by a crime, do not in any way sustain the proposition that the damaged party must resort to the Courts for relief.

The article in *10 So. Calif. L. Rev.* 22, is an early commentary on the Unfair Sales Act in which the author states that it was wise to include the remedy of injunction. There is no suggestion that a merchant *must* use it, but merely *the hope* that many of them will, instead of meeting below cost competition. The author recognizes that "fair-minded" competitors do meet prices that are below cost, as a matter of self-protection, but with the additional remedy of injunction available he believes that the number will be "materially reduced."

This is not a legal conclusion and does not support this Court's finding that *since the remedy of injunction is* [fol. 1230] *provided it must be used.* There is no legal precedent for the conclusion that an injured party must *litigate* his difference with others, but, on the contrary, it is the policy of the law to discourage litigation wherever possible.

Sec. 598.5(a) of the Act provides that an injured party "may maintain an action in any court of equitable jurisdiction to prevent, restrain or enjoin such violation." This language is permissive only, and orthodox equitable principles still apply. (*Elliott* v. *Amalgamated Meat Cutters,* 91 F. Supp. 690). It is fundamental that injunctive relief will not be granted where the complaining party has an adequate remedy at law or adequate means of redress in his own hands. (43 C.J.S. 456). These established principles are not compatable (sic) with this Court's finding that the statute makes the remedy *exclusive* and deprives a merchant of the right of self-defense. Section 598.5(b) grants the alternative remedy of damages and it cannot reasonably be concluded that either or both are exclusive.

The basic error which is inherent in this Court's conclusion is in treating mere sales below cost as a violation of the Act. A merchant may not be justified in operating a lottery or committing any other offense forbidden by statute simply because his competitors do these things. These are offenses which are unlawful per se and are punishable re-

gardless of the motivating circumstances or the results thereof. These cases come within the adage that one violation of law cannot justify another or two wrongs do not make a right, but these offenses bear no relation to the problem before the Court.

It cannot be emphasized too often that the same facts which will support a civil action under the Act will also support a criminal action. *Both require proof of the wrongful intent to injure competitors and proof that the sales had this effect.* Therefore, sales below cost for any other purpose are lawful and this, of necessity, includes sales made for the purpose of meeting below cost prices of competitors. The authorities are in complete accord on this question, and any other interpretation of the Act is in violation of the 5th and 14th Amendments to the Constitution of the United States.

This Court may have concluded that, as a practical matter, this would weaken the enforcement of the law and encourage retaliatory price reductions, but these practical considerations cannot be substituted for the constitutional guarantees which this Court so carefully delineated in *Englebrecht* v. *Day.* It has been argued that all sales below cost should be forbidden, but all attempts to do so have been held unconstitutional. (128 A.L.R. 1126).

This Court holds herein that a merchant faced with below cost competition has a statutory remedy which is [fol. 1231] adequate; that he must therefore pursue this remedy, and, if he meets these prices to protect his own business, he is subject to both the civil and criminal penalties provided by the Act. The mere statement of the Court's conclusion demonstrates the fallacy of this portion of the opinion. It not only ignores the intents and results condemned by the statute, which are essential elements of an offense, but affirmatively shows that the prices were made for a purpose not condemned by the Act, i.e., to protect his business. This is a legitimate purpose and cannot injure competitors who are, themselves, selling at an equally low price.

V. The Trading Stamp Issue

The majority opinion holds that (1) trading stamps are cash discounts; and (2) cash discounts do not reduce prices.

It is stated that the weight of law, logic and reason sustain these conclusions.

In following the cash discount theory of the trading stamp people, the majority have created an exception not found in the Act. Sections 598.6 and 598.7 are the exceptions, but neither contain any reference to the question of whether sales are on credit or for cash. If the Legislature had desired to make a distinction between sales for cash and on credit, it would have been a simple matter for it to have said so.

In *Bristol-Myers Co.* v. *Picker,* (N.Y. 1949), 89 N.Y.S. 2d 215, the Court, at page 220, said:

> "Neither can I look with favor upon the proposition that the use of these cash register receipts is a legal substitute for the extension of credit to a retail purchaser of trade-marked articles. Again, the answer is that the legislature has failed to provide that as an exception to the statutory ban."

That decision was reviewed by the Court of Appeals and the cases relied upon in the majority opinion in this case were cited. (96 N. E. 2d 177). In answering this argument, the highest New York Court said:

> "The difficulty with these views is that the situation here presented is not among the several excluded by the legislature from the operation of the statute.
>
> "No matter how one puts it, the customer who is accorded a cash discount in reality pays that much less for the article which he purchases, and this is nonetheless true because the return is by way of mer- [fol. 1232] chandise rather than coin which may purchase merchandise." (96 N. E. 2d 180).

The majority has found that stamps are given to encourage cash purchases in an industry which has, for all practical purposes, been on a cash basis long before the adoption of trading stamps by retail grocers. The Association admits that the principal purpose is not to encourage cash transactions but *to attract trade* (Pelou-

bet's testimony, R. 884). The New York Court analyzed this argument in 89 N.Y.S. 2d at page 220, as follows:

> "The same decent respect for the law as it is written, serves also to dispel the contention of defendants that the cash register receipts are not objectionable, *because the motive asserted for their use* is to induce or attract customers to defendants' store. What could do that more effectively than direct price cuts? Doubtless many more customers would be drawn to their store if defendants sold plaintiff's trade-marked goods for half of their fixed contract prices. But no one in such a case would seriously heed the plea that the purpose thereof was merely to attract the public to defendants' store. * * * " (Italics ours)

There is inherent in the majority opinion the thought that since trading stamps antedate the minimum price laws, that they constitute an implied exception to the Act. The record shows that while stamps have been used in department stores, where the markup is from 40 to 50 percent over cost, that they did not become a factor in the retail food business until after the Unfair Sales laws were enacted and the normal competitive situation was restored after the last war. (R. 283). It is generally recognized that the minimum price laws are responsible for the present popularity of stamps with grocerymen. (See 105 Pa. L. R. 242 and 24 Tenn. L. R. 557, cited in this opinion). Like every other apparent loop hole in the law, the system degenerated rapidly when this form of price inducement became general and price reductions were increased through the distribution of double stamps. This continued unabated until March, 1954, when S & H realized that multiple stamps served to emphasize the weakness of its position, and directed that the practice stop. (R. 302-304). The trial court experienced no difficulty in seeing that double stamps reduce prices and presumably to the extent of the value of both stamps, but when he ordered that only one stamp be given with each 10¢ purchase, he found no price reduction occurred.

He reasoned that one stamp was a normal business practice but multiple stamps were abnormal and this, notwith-

standing that double stamps had been distributed in the area in question for a period of over two years. (R. 302-304).

[fol. 1233] The New York Court demonstrates the fallacy of this positron in 96 N. E. 2d 177, at pages 180-181.

> "The argument that the giving of a cash discount is an accepted form of doing business on the retail level, and for that reason constitutes an implied exception to the statute, is without weight, for prior to the passage of the Fair Trade Law it was also an accepted form of business for a merchant to sell at any price he chose; it is those very practices that the act sought to interdict. It should be noted in passing that there is no evidence in this record of any custom or practice of giving cash discounts among retailers, although it is common knowledge that such is a customary practice as between wholesalers and retailers. In any event, the Legislature has not sanctioned such discounts in the Fair Trade Law. It could well have provided for this exception as it has others, General Business Law, sec. 369-a, subds. 2, 3; sec. 369-c, and as it had in the Alcoholic Beverage Control Law, secs. 101-b, subd. 2, par. (b), which expressly permits a discount of 1% to the retailer for prompt payment. It has not done so, and we are not authorized to read such an exception into the Fair Trade Law."

Safeway asks the Court to re-examine the authorities cited by the majority to determine how much weight can be accorded each. We believe the Court will find that they consist of mere dicta or erroneous conclusions drawn from outdated accounting texts and that they do not represent the weight of law, logic and reason on this problem.

The initial reference in the opinion is to the decisions of California and Utah in *Weco Products Co.* v. *Mid-City Cut Rate Drug Stores*, 131 P. 2d 856, and *Trade Commission* v. *Bush*, 259 P. 2d 364.

In the *Bush* case, the Utah Court said:

> "It becomes rather enigmatic, however, when that cost is passed along to the customer as a discount,

which, as a practical matter, gives the housewife a $1.00 article for 98¢ if she redeems the stamps * * * "

An enigma is something that baffles, is insolvable or inexplicable. The Court, therefore, refused to solve the question *and decided the case upon the grounds that the record would not sustain the trial court's finding of wrongful intent to injure competitors.* This cannot be the logic which the majority refers to as sustaining this decision.

The majority relies principally upon the *Weco Products* [fol. 1234] case from California, and the crux of that decision reads:

> " * * * A cash discount is a reward for prompt payment. It is a trade practice long established, and is authoritatively recognized as being not a deduction from the purchase price. *Montgomery, Auditing Theory and Practice,* pp. 499-500.
>
> "Consideration of such authorities as are available leads us to the conclusion that the giving of trading stamps as in the instance now before us does not effect a reduction in the price of the articles sold such as to constitute a violation of the Fair Trade Act. The matter has not been passed upon by the appellate courts of this State. However, aside from the consideration of the Fair Trade Act, the status of trading stamps is definitely fixed in this State as being a discount for immediate payment of cash * * * ' "

The foregoing is not only totally lacking in logic, but the Court does not purport to apply any logical thought to the problem. This decision is by an inferior court which felt bound by the Supreme Court's conclusion that trading stamps are cash discounts, even though the Supreme Court had been careful to distinguish the statute it was construing from the Unfair Sales Act. (*Food and Grocery Bureau* v. *Garfield,* 125 P. 2d 3).

After erroneously finding that the nature of trading stamps had been "definitely fixed" by the Supreme Court's decision, the intermediate court compounded the error by relying upon an obsolete issue of Montgomery, Auditing Theory and Practice, to establish the fact that cash dis-

counts do not reduce the purchase price. In order to demonstrate the enormity of the error of the California Court, Safeway carefully reviewed the reversal of opinion by Montgomery and the other recognized leaders in this field in its brief (p. 33-45). The unanimity of opinion that cash discounts do reduce the price of merchandise is such that it can no longer be said that there is any substantial conflict on this question.

This, then, cannot be the superior logic which this Court refers to in the present opinion, because it was the utter lack of logic in their former views which led the economists and accountants to change their position on this question.

Professor Paton, the economist, quotes Montgomery in his Accountants Handbook, as follows:

> "* * * Montgomery (Auditing Theory and Practice) stated that 'it has become general practice to take advantage of the cash discounts, and as a practical matter they usually are now considered as *equivalent to an adjustment of sales price,* not as an inducement to the purchaser to anticipate payment of the obligation.'" (Italics ours)

[fol. 1235] The fact that Montgomery and the other experts in this field have changed their views on this subject would seem to destroy the authoritativeness of the California case in a jurisdiction such as Oklahoma where the Court is not bound by a precedent, but is at liberty to analyze the problem in the light of modern economic theory.

The present opinion cites the article appearing in 105 Pa. L. R. 248, but, in doing so, quotes a portion of a sentence therefrom out of context. The full paragraph reads:

> "To hold that distribution of trading stamps is not a violation because the stamps represent a 'cash discount' which, according to accounting procedure, is a cost of selling rather than a reduction in price, subordinates the legal question to the accounting conclusion. Even assuming that stamp distribution is properly analogous to a cash discount, its treatment as a selling cost is sound only to the extent that the factors dictating such an accounting conclusion are proper ones

for consideration in resolving the legal issue. But the accounting conclusion is an arbitrary one. It is designed primarily to achieve consistency with the same enterprise's accounting treatment of similarly ambiguous transactions, a factor obviously bearing no relation to the legal issue involved. *While in the case of stamps a stronger argument may be made for treatment as a selling cost, since seller receives in cash the full list price regardless of the discount in stamps and must therefore account for the cash income as well as for his payment to the stamp company for use of the stamps,* the accounting conclusion remains arbitrary nonetheless, because it measures the effect of the transaction from the standpoint of seller alone. How the seller reflects a cash discount on his books is of no consequence to buyer; * * * Thus, labeling the stamps a 'cash discount,' settles nothing, for even if sellers will normally treat the stamps as a selling cost such treatment represents no more than seller's bookkeeping procedure." (Italics ours)

In quoting the italicized portion, the majority breaks a sentence and thus omits the conclusion of the author. This paragraph and the article, as a whole, is diametrically opposed to the second syllabus of the present opinion. The author of the article takes a logical approach to this problem, but his logic is lost when partially quoted out of context.

At pages 10 and 11, the majority cites and relies upon dicta found in cases having nothing to do with the question now before the Court. This should be compared with the logic applied to this class of cases by the Federal Court in [fol. 1236] *Colgate-Palmolive Company* v. *Max Dichter,* 142 F. Supp. 545, wherein it is said:

"It is true that the Massachusetts court has spoken of trading stamps as constituting a 'discount for cash.' Sperry & Hutchinson Co. v. Director of Division of Necessaries of Life, 307 Mass. 408, 415 30 N. E. 2d 269, 273, 131 A. L. R. 1254. This, however, was simply in

connection with determining that the business was legitimate, *and not in the instant frame of reference.* I do not regard such a decision as requiring me to find on the present record that they are not a discount for cash plus something else." (Italics ours)

In *Exparte Hutchinson* (1904), 137 F. 949, cited by the majority, the only question was the validity of a license tax. The portion quoted from by the majority is only reference to the nature of trading stamps and is obiter dictum, unsupported by any authority or logic. The Pennsylvania Law Review article referred to above says of this class of cases that they are mere conclusions, and add nothing to the solution of this problem. S & H referred to them as cash discounts, and, since this was not an issue in the case, no one challenged this characterization. There is no logic discernable on this issue, in a case of that kind.

In *Winston* v. *Beeson,* (N.C. 1904), 47 S. E. 457, cited in the opinion, the question was whether trading stamps violated a gift enterprise or lottery statute. There was obviously no reason for the Court to determine anything other than whether the element of chance was present. The Court relied principally upon the case of *State* v. *Dalton,* 46 Atl. 234, and, if these cases have any value, witness what that Court in that case said concerning the distribution of stamps. At page 237, it is said:

"This is equivalent to declaring that it is illegal for a man to give away one article as a premium to the buyer for having purchased another; * * * "

The foregoing characterizes trading stamps as a "tied sale," which is specifically condemned by Section 598.2(d), of the Unfair Sales Act, unless the cost of both articles is included in the computation of cost, and yet the majority ignores this issue completely.

The opinion cites *Sperry & Hutchinson Co.* v. *Siegel-Cooper & Co.,* 225 Ill. App. 540, affirmed 309 Ill. 193, 140 N. E. 864. In affirming the lower court the Supreme Court does not mention the question because it was not an issue in the case. The majority quotes the dictum of the lower

court, and omits the actual holding by that court. Syllabus 1 of that case reads:

> [fol. 1237] "TRADING STAMPS—as representative of property right. Trading stamps issued by a retail mercantile establishment and redeemable in merchandise or cash are not mere gratuities *but represent a property right of a definite pecuniary value, which has been bought and paid for by the customer collecting them.*" (Italics ours)

Here is another Court holding that trading stamps are purchased and paid for by the customer as a part of a "tied sale." No logic can be gleaned from cases of this kind unless the Court is willing to accept the decided question rather than the extraneous matter found in these early decisions.

If, in citing these cases, the Court means to imply that by virtue of their antiquity they describe a business practice of long standing which should not be disturbed, we would again call attention to the analysis by the New York Court of this contention. In *Bristol-Myers Co.* v. *Picker*, (N.Y. 1950), 96 N. E. 2d 177, at page 180, it is said:

> "The argument that the giving of a cash discount is an accepted form of doing business on the retail level, and for that reason constitutes an implied exception to the statute, is without weight, for prior to the passage of the Fair Trade Law it was also an accepted form of business for a merchant to sell at any price he chose; it is those very practices that the act sought to interdict."

In *Sperry & Hutchinson* v. *Hudson*, (Ore. 1950), 226 P. 2d 501, relied upon in the opinion, the only question was whether trading stamps violated the Blue Sky Law of the State of Oregon. As in the earlier cases referred to, it was perfectly harmless for the Court to agree with S & H that stamps were cash discounts because if they were not "securities" it was immaterial what name the Court gave them.

We ask the Court to consider the fact that with the exception of the *Weco Products* case from California, none

of the foregoing cases state that cash discounts do not reduce the price of the merchandise with which they are distributed. This question was not in issue in the other cases and not decided.

In *Sperry & Hutchinson* v. *Margetts,* (N.J. 1954), 104 Atl. 2d 317, it was an issue to the extent that it was necessary to determine whether they constitute a fraudulent rebate or concession in violation of the law which required that the price of motor fuels be posted. The Court adopted the dicta in the older case, that stamps are a form of cash [fol. 1238] discount, and, then because of the lack of adequate expert testimony, found that cash discounts do not reduce prices.

There was only one expert witness in that case. (96 Atl. 2d 706, 712). Mr. Peloubet, who testified for S & H in that case, furnished all of the expert evidence for the New Jersey Court. (R. 851). When Mr. Peloubet is unopposed, he does not present modern authority, but uses an issue of Montgomery's "Auditing Theory and Practice," which no longer expresses that author's views, and the little known work of Rosenkamp and Wider. This led the New Jersey Court to say, "The opinion evidence is one on this proposition." (104 Atl. 2d. 310, 312). But, when Mr. Peloubet was confronted with Montgomery's present views and those of Professors Paton and Finney, whom he acknowledges to be authorities in the field, he testified:

(1) If most customers take the discount, sales should be shown *net* after deducting the discount (R. 875);

(2) There is no objection to treating the purchase price as the *net* figure after deducting the discount (R. 877);

(3) If the *gross* price is entered by the seller and the discount is taken, the seller must then charge the discount as an expense and this is ridiculous (R. 880);

(4) If the gross price is used, the purchaser must enter the discount as income when, as a matter of fact, he has earned nothing (R. 851);

(5) There is no history of the cash discount system being used in the retail grocery business (R. 847, 848, 883);

(6) The principal benefit of stamps is not to encourage the payment of cash but to induce people to trade with you (R. 884). (This is a price inducement like any other price reduction).

(7) Paton is one of the finest authorities on the subject (R. 891). Paton says, "The proper interpretation views regular discounts offered to induce prompt payment as an offset to nominal sales figures. The *true, effective price is the net figure* * * * " (Ex. following R. 904).

(8) Finney is one of the most widely used school books (R. 897). Finney says, "The treatment of purchase discounts as other income is based on *an absurdity* * * * with respect to both purchase and sales discounts, they are somewhat analogous to returns and allowances; both are deductions to determine the *net cost* of purchases and the *net* proceeds of sales." (Ex. following R. 904).

[fol. 1239] We do not see how the majority can rely upon the *Margetts* case, when it can be demonstrated that S & H was the only party that presented expert testimony and Mr. Peloubet did not advise that Court that Montgomery, on whom he relied, had changed his views on the question. Where is the logic to which the majority refers when Peloubet admits that there are aspects of his theory which are "ridiculous" and the principal benefit of stamps is not to encourage the payment of cash but to induce customers into the store. On the contrary, doesn't Paton and Finney have the better logic on their side when they demonstrate that the "true effective price" is the net figure after cash discounts are deducted and the practice of using the gross figure was due to bookkeeping error?

The *Weco Products* case and the *Margetts* case are founded upon accounting and economic theories, and principally that of Montgomery. This is one approach to this problem, but, if the Court is going to take this ap-

proach, logic demands that Montgomery no longer be misquoted and that modern economic theory be applied. (See Safeway's original brief, pp. 33-45).

The case of *Geyer* v. *American Stores,* (Pa. 1956), 124 Atl. 2d 694, is barren of any analysis of this problem, as the Court relied entirely upon their former decision in *Bristol-Myers Co.* v. *Lit Brothers, Inc.,* 6 Atl. 2d 843, saying: "The decision thus rendered controls the present litigation." It is, therefore, necessary to turn to the decision in the *Lit Brothers* case to determine what logic was applied.

In *Lit Brothers,* the Courts set forth their concept of the purpose of the Fair Trade laws, and evidenced little enthusiasm for the compulsory provisions of it. They concluded that the Act only applied to *conventional* price reductions. The Court said, for instance, that a merchant could, instead of distributing stamps, give dinners, theatre tickets or ten gallons of gasoline to everyone purchasing merchandise of a certain amount and this would not violate the law (6 Atl. 2d 843, 847). If we apply this reasoning to the Unfair Sales Act, we find that the Legislature expressly condemned it by the "tied sale" provisions in Sections 598.2(d).

They further found that the price reductions were "de minimis" and, besides, to grant the injunction, would be of slight benefit to the manufacturer and do substantial damage to defendant. If this concept of the Fair Trade Laws is accepted, then nothing less than a direct price reduction in the conventional sense, is prohibited and the question is whether the same reasoning or logic is to be applied to the Unfair Sales Act. In 105 Pa. L. R. 242, at page 260, the author recognizes this distinction:

> "Since the two types of legislation have different purposes, the fair trade acts to protect the manu- [fol. 1240] turer's good will in branded products and the sales below cost acts to curtail destructive price competition, different conclusions may, and it appears, should, be reached."

Whether a manufacturer of a fair traded item, which normally retails for 50% more than its wholesale cost,

suffers any loss of good will by a price reduction of 2½% is debatable. But where food products are customarily sold at 6% above their wholesale cost, no merchant can successfully compete with one selling 2½% below that figure. The evidence in this case all shows that a differential of 2½% is just as destructive as a much larger one because of the close margins on which the retail food business operates.

The majority of the Pennsylvania Court construed the Fair Trade Act in a manner which made it unnecessary to determine the question of whether stamps reduce prices because they found it was not a conventional price reduction. Justice Drew, joined by the Chief Justice, refused to follow the majority's soft construction of the Act and went directly to this point. (6 Atl. 2d 849)

The converse of this situation prevailed in New York in the case of *Bristol-Myers Co.* v. *Picker,* (N.Y. 1950), 96 N. E. 2d 177. The dissenting judges there, adopted the soft construction followed by Pennsylvania majority, saying that while cash register receipts reduce the cost of merchandise—they do not damage the manufacturer's good will. At page 183, the dissenting opinion reads:

> "It cannot be denied, therefore, that there is a mathematical reduction of the selling price of branded goods. But the question arises, does such reduction under the special circumstances disclosed by this record constitute wilful price cutting injurious to the manufacturer's good will? In my view, it does not."

The majority, on the other hand, felt that they were not at liberty to grant an exception not provided by the Legislature, or to classify price reductions as conventional and unconventional. All members of the Court agreed that cash register receipts, which serve the same purpose as trading stamps, caused a "mathematical reduction in the selling price." (96 N. E. 2d 182).

The conflict between the New York and Pennsylvania Courts as to whether the Fair Trade Acts should receive a strict or liberal construction is not a problem here, because we are dealing with a different law, enacted for a different purpose, and this Court has heretofore held that

as remedial legislation it will be liberally construed. (*Englebrecht* v. *Day*, 208 P. 2d 538, 542). If it is to receive a liberal interpretation the question is whether trading [fol. 1241] stamps effect a mathematical reduction in the price of merchandise. The vagaries of the Pennsylvania Court in *Lit Brothers* and *Gever* do not purport to answer this question. The New York Courts, in Bristol-Myers v. Picker, in two analytical and logical decisions, have not only answered the question but they contain a critical analysis of the case law on the subject. (97 N.Y.S. 2d 550 and 96 N. E. 2d 177).

It is important to note that neither the Pennsylvania nor New York Courts fell victims to the specious reasoning of the California Court that cash discounts do not reduce price, because the accountants, at one time, recorded the gross amount of the invoice and charged the discount to expense of the seller and credited it as income to the purchaser. Montgomery and other leading authorities had discovered their error long before the *Weco Products* case was decided. The approval of the *Weco* decision by the majority of this Court should be re-examined in the light of modern economic and accounting authority.

The attorneys for the Association have argued that this Court should permit the trading stamp merchants a competitive advantage because they are independents competing with chain stores. Even if this argument were worthy of consideration, it is based upon a false premise. The effect of the present decision is to compel all merchants to handle stamps and, when this occurs, the competitive advantage disappears because the same values can be obtained everywhere. This means that all retail food stores will be saddled with an additional expense of 2½%, thus reducing the statutory markup from 6 to 3½%. Unless retail prices of food products are raised to offset this loss, many independent merchants will not be able to survive this type of price competition.

VI. The "Tied Sale" Issue

The dissenting opinion correctly holds that the distribution of trading stamps is a part of a "tied sale" and sub-

ject to the provisions of Section 598.7(d) of the Act. The case of *State* v. *Dalton*, 46 Atl. 234, which was relied upon in *Winston* v. *Bieson*, 47 S. E. 457, and the case of *Sperry & Hutchinson* v. *Siegel-Cooper & Co.*, 225 Ill. App. 540, support this conclusion.

The majority cites and quotes from the dictum in both of these decisions, but makes no reference to this issue in this case. (See Prop. II, Safeway brief, p. 101-113).

Section 598.7(d) is clear and provides that when two or more items are sold for a single price the merchant must charge at least 6% profit on each item. The Fair Trade laws do not contain a similar provision and, hence, the Pennsylvania Court in *Bristol-Myers Co.* v. *Lit Brothers, Inc.* 6 Atl. 2d 843, which is cited by the majority, said that trading stamps were on a par with the gift of "a dinner worth $1.75, seven day's tickets for seven days parking of an automobile at the rate of 25 cents a day, [fol. 1242] or a theatre ticket costing $1.75, or ten gallons of gasoline."

Many of the Unfair Sales Acts, like our own, guard against a price reduction in this form. In *State* v. *Tanker Gas, Inc.* (Wisc. 1947), 26 N. W. 2d 647, the defendant advertised two gallons of gasoline as a gift with the purchase of seven. The Court held this was a tied sale and all nine gallons had to bear the statutory markup.

This Court has consistently held that anything ostensibly given to a customer with the purchase of another item constitutes the sale of both as a tied sale. In *State* v. *Lynch*, (Okla. 1943), 137 P. 2d 949, it was a chance to participate in a drawing given to every purchaser of a ticket of admission to a theatre. In *Commonweath Life Insurance Co.* v. *Miles*, (Okla. 1944), 145 P. 2d 964, it was a policy of insurance given with the purchase of gasoline. In other words, this is the first time anyone has been able to persuade this Court that anything passing from the seller to the buyer is not paid for by the purchase price.

In both of the foregoing cases, the defendants claimed that the premium was intended as a gift, but the Court held that the motive of the vendor did not change the

nature of the transaction and that an unidentified portion of the purchase price had to be allocated to both items.

S & H apparently takes this position when it will serve its purpose.

In *Sperry & Hutchinson Co.* v. *Hertzberg,* (N.J. 1905), 60 Atl. 368, at page 372, it is said:

> "* * * I purposely use the word 'sold' because when one of the complainant's subscribers sells an article for a dollar and gives out ten trading stamps the transaction, in effect, consists in the transfer then and there delivered and the transfer of an assignable order on the complainant for certain other merchandise. Both things are transferable property, and both are paid for by the dollar. * * * "

In *State* v. *Sperry-Hutchinson* (Minn. 1910), 126 N. W. 120, at page 125, it is said:

> "* * * The stamps cost the merchants at the rate of half a cent each, or 5 cents for ten stamps. He gives his cash customers, if they call for them, ten stamps for every dollar's worth of merchandise purchased. The effect is that the merchant receives 95 cents for every dollar's worth of goods sold for cash. * * * "

[fol. 1243] A complete disposition of the questions raised in the appeal includes a determination of whether Section 598.7(d) of the Act includes all items passing to the purchaser as a part of the sale. The weight of law, logic and reason support the conclusion that trading stamps are articles or items within the purview of this provision. They appear to be an integral part of the contract of sale and must be included in computing statutory cost.

In considering the application of Section 598.2(d) to trading stamps, we ask the Court to examine the case of *Bristol-Myers Co.* v. *Lit Bros. Inc.* (Pa. 1939), 6 A. 2d 843, which is the foundation of the *Gever* decision, cited and relied upon by the majority. In the *Lit Bros.* case the Court said that trading stamps were like giving customers $1.75 dinners or ten gallons of gasoline in considera-

tion for their patronage. The Pennsylvania Court held that none of these things violated the Fair Trade Law. This is also true of the Unfair Sales Act, but they must bear the statutory markup like any item. (598.2(d).

In addition to the foregoing, Safeway believes that the present opinion must be rewritten not only to include the issues which have been omitted and to correct the misunderstanding which the Court has concerning Safeway's position on the exception in Section 598.7, but also because the opinion fails to distinguish between Safeway's competitive position in the Oklahoma City area where trading stamps were involved, and its position in Enid, Shawnee, Norman and Tulsa where its competitors had lead (sic) the market down on a dollar and cents basis. The basis of the majority decision is that the prices of Safeway's competitors were illegal prices and, therefore, Safeway could not meet these prices. We assume the Court is here speaking of the prices in the outside towns, since the Court has held that the prices of the trading stamp merchants were legal prices. Because of the approach that the Court has taken to this problem, we believe that it is necessary that these two situations be treated separately in order to eliminate the confusion which would otherwise exist.

Finally, we believe that even if the Court should approve the two principal judicial findings, that this does not dispose of the ultimate issue in this case. The Court has found for the first time in this, or any other jurisdiction, that a merchant cannot meet below cost sales of competitors under the Unfair Sales Act. The majority found, for the first time in this jurisdiction, that trading stamps are cash discounts; that cash discounts do not reduce price and, hence, a merchant cannot lawfully meet this form of competition under the Act. Even if we have failed in our efforts to convince the Court that the authorities on these questions are to the contrary, we submit that there can be no reasonable difference of opinion on the question of whether Safeway honestly and sincerely subscribed to the views set forth in this brief at the time the price reductions were made.

[fol. 1244] As set forth in the original briefs, Safeway did not approach these problems in the spirit of retaliation,

but, on the contrary, believed that it had the right to protect its business, both against the lure of the trading stamps in Oklahoma City and the lower prices existing in the other towns. Safeway had suffered a loss of trade for a period of nearly two years before any action was taken. Its right to meet these prices was first submitted to counsel, with the request for an opinion. Counsel briefed the question and found no conflict in the then existing authorities as to Safeway's right to reduce prices for the purpose of protecting its trade against competitors. Counsel reasoned that this was a business necessity uniformly followed in a competitive market, and that unless Safeway was instrumental in leading the market down, or cutting below its competitors, that no damage would result by merely meeting the prices previously established by others. On the question of whether trading stamps reduced the price of merchandise, a conflict was found, but they concluded that the reasoning of the New York Court in *Bristol-Myers* v. *Picker,* supra was superior to those Courts who relied upon the accounting theory and that the New York views would ultimately prevail in this Court. In addition to this, however, in those jurisdictions where the trading stamp issue had been adjudicated, counsel found no statute which contained the "tied sale" provision which is found in the Oklahoma Act, and concluded that this, alone, was sufficient to distinguish the Oklahoma Law from those of California and others where the accounting theory had prevailed.

Based upon the advice of counsel, Safeway reduced its prices in an effort to stay the diversion of its trade and, even if the Court should conclude that counsel was wrong on both issues, the most that can be said is that Safeway erred as a matter of law. In *Colgate-Palmolive* v. *Sperry-Hutchinson Co.,* (Mass. 1956. appendix first brief), the Court said of the *Colgate Company* which had erred in the other direction, that it had simply made a mistake of law but in view of the state of the authorities it was a reasonable one. The same conclusion was reached by the Utah Court in *Trade Commission* v. *Bush,* 259 P. 2d 304. It follows, therefore, that the errors, if any, which Safeway made, were on a par with the *Colgate-Palmolive*

Company which failed to recognize that trading stamps do reduce price and the merchant in the *Bush* case who believed that they did not. These are errors of law, honestly made not condemned by the Unfair Sales Act.

The scope of the injunction in this case is such that simple mechanical errors will subject Safeway to prosecution for contempt. We do not believe that the most ardent advocate of minimum price laws would contend that this was the purpose or intent which led to the adoption of the Act. Neither Safeway, nor any other merchant, should be found guilty of violating a criminal statute, when the proof is clear that their acts were the result of an honest mistake of law.

Society protects itself by omitting the element of *mens rea* from certain offenses, but this is not true in the field [fol. 1245] of economic regulation. (*Englebrecht* v. *Day*). The novelty of the trading stamp issue should not be permitted to obscure this fact. The Court has correctly held that Safeway reduced its prices for the purpose of meeting competitive prices which it should have known were below statutory cost. This was a lawful purpose until this Court spoke. (*Perkins* v. *King Soopers, Inc.; People* v. *Pay Less Drug Store; Miller's Grocerias* v. *Food Distributors; State* v. *20th Century Market; Balzar* v. *Caler,* and *Ellis* v. *Dallas*), supra.

It can, and undoubtedly will, be argued that such a defense could be abused, and to approve it would render the Act ineffective. Safeway does not ask that the Court condone a subterfuge, but it does ask that no penalty be assessed where its only error was one of law.

Respectfully submitted,

V. P. Crowe, John W. Swinford, Embry, Crowe, Tolbert, Boxley & Johnson, Attorneys for Plaintiff in Error.

Drummond Wilde, R. J. Van Gemert, Oakland, California, of Counsel.

January '58.

[fol. 1246] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

The Clerk Is Hereby Directed to Enter the Following Orders:

ORDER DENYING PETITION FOR REHEARING—February 11, 1958

37,326—Safeway Stores, Inc., a foreign corporation, v Oklahoma Retail Grocers Ass'n., Inc., et al. Petition for rehearing and application for oral argument denied.

Earl Welch, Chief Justice.

[fol. 1247] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 37,326

SAFEWAY STORES, INCORPORATED, a Foreign corporation, Plaintiff in Error,

vs.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., a corporation, and LOUIE J. SPEED, INC., a Corporation, Defendants in Error.

ORDER DENYING APPLICATION FOR LEAVE TO FILE SECOND PETITION FOR REHEARING—February 25, 1958

"Application for leave to file Second Petition for Rehearing denied".

Earl Welch, Chief Justice.

[fol. 1248] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 37,326

SAFEWAY STORES, INCORPORATED a foreign corporation, Plaintiff in Error,

vs.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., a corporation, and LOUIE J. SPEED, INC., a corporation, Defendants in Error.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed May 8, 1958

1. Notice is hereby given that Safeway Stores, Incorporated, the Plaintiff in Error above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Oklahoma denying the Motion for Rehearing of Safeway Stores, Incorporated, entered in this cause on February 11, 1958, which final judgment affirmed the prior decision of the Supreme Court of the State of Oklahoma and the judgment of the District Court within and for Oklahoma County, State of Oklahoma.

[fol. 1249] This appeal is taken pursuant to 28 U.S.C., Section 1257(2).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the entire record in this action.

III. The following questions are presented by this appeal:

(1) Whether, as here applied, the Oklahoma Unfair Sales Act, by permitting the giving or issuing of trading stamps, cash register receipts or other evidences of credit as a discount for prompt payment of cash to the purchaser in a sale at retail, but prohibiting the giving or issuing of cash money, or one or more other items of a value equal to or

less than the value of the trading stamps, cash register receipts or other evidences of credit as a discount for prompt payment of cash, or for the sole purpose of meeting prices of competitors giving or issuing trading stamps, cash register receipts or other evidences of credit, when the value of such additional gift, or issuance, subtracted from the sales price, reduces that price below statutory cost, is arbitrary, discriminatory, and unreasonable and [fol. 1250] deprives Appellant of liberty and property without due process of law, and denies to Appellant within the jurisdiction of the State of Oklahoma the equal protection of the laws, all in violation of the Fourteenth Amendment to the Constitution of the United States, and is therefore invalid.

(2) Whether, as here applied, the Oklahoma Unfair Sales Act, by prohibiting sales at prices set for the sole purpose of meeting prices of competitors who are selling the same articles or products of comparable quality below their cost, as defined in the Oklahoma Unfair Sales Act, is arbitrary, discriminatory, and unreasonable and deprives Appellant of liberty and property without due process of law, and denies to Appellant within the jurisdiction of the State of Oklahoma the equal protection of the laws, all in violation of the Fourteenth Amendment to the Constitution of the United States, and is therefore invalid.

(3) Whether, as here applied, the Oklahoma Unfair Sales Act, by prohibiting Appellant from giving or issuing any trading stamps, cash register receipts, or other evidences [fol. 1251] of credit as a discount for prompt payment of cash of a value in excess of three percent of the selling price of the merchandise with which such gift or issuance is made where said merchandise is sold at statutory cost, but not prohibiting competitors of Appellant from doing the same acts, is arbitrary, discriminatory and unreasonable and deprives Appellant of liberty and property without due process of law and denies Appellant equal protection of the laws, all in violation of the Fourteenth Amendment to the Constitution of the United States, and is therefore invalid.

(4) Whether, as here applied, the Oklahoma Unfair Sales Act, by permitting the giving or issuing of trading stamps,

cash register receipts, or other evidences of credit to a purchaser in a sale at retail at statutory cost without fixing any limit on the value that such trading stamps, cash register receipts, or other evidences of credit may have is uncertain, indefinite, vague and unreasonable and fails to give notice of acts constituting a violation of its terms and deprives Appellant of liberty and property without due process of law, and denies to Appellant within the [fol. 1252] jurisdiction of the State of Oklahoma the equal protection of the laws, all in violation of the Fourteenth Amendment to the Constitution of the United States, and is therefore invalid.

Filed this 8th day of May, 1958.

Embry, Crowe, Tolbert, Boxley and Johnson, By V. P. Crowe, First National Building, Oklahoma City, Oklahoma.

Clark, Reed & Clark, By Robert L. Clark, By Ramsey Clark, By William L. Keller, Adolphus Tower, Dallas, Texas. Counsel for the Appellant.

Proof of Service (omitted in printing).

[fol. 1253] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 37,326

SAFEWAY STORES, INCORPORATED a foreign corporation, Plaintiff in Error,

vs.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., a corporation, and LOUIE J. SPEED, INC., a Corporation, Defendants in Error.

ORDER ENLARGING TIME TO DOCKET CASE AND TO FILE RECORD—June 2, 1958

It Is Hereby Ordered, on motion of Plaintiff in Error, Safeway Stores, Incorporated, good cause having been

shown, that the time within which the above entitled cause may be docketed and the record thereof filed with the Clerk of the Supreme Court of the United States be, and the same is, hereby extended to and including August 4, 1958.

Dated this 2nd day of June, 1958.

Earl Welch, Chief Justice of the Supreme Court of Oklahoma.

[fol. 1254] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 1255]

SUPREME COURT OF THE UNITED STATES

No. 252, October Term, 1958

SAFEWAY STORES, INCORPORATED, Appellant,

vs.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., and LOUIE J. SPEED, INC.

Appeal from the Supreme Court of the State of Oklahoma.

ORDER NOTING PROBABLE JURISDICTION—October 13, 1958

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Clark took no part in the consideration or decision of this application.

Office - Supreme Court, U.S.
FILED
AUG 4 1958
JOHN T. FEY, Clerk

In the

Supreme Court of the United States

OCTOBER TERM, 1957

No. 252

SAFEWAY STORES, INCORPORATED,

Appellant,

v.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC. and LOUIE J. SPEED, INC.,

Appellees.

On Appeal from the Supreme Court of the State of Oklahoma

JURISDICTIONAL STATEMENT

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In the

Supreme Court of the United States

OCTOBER TERM, 1957

No.

SAFEWAY STORES, INCORPORATED,

Appellant,

v.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC. and LOUIE J. SPEED, INC.,

Appellees.

On Appeal from the Supreme Court of the State of Oklahoma

JURISDICTIONAL STATEMENT

This is an appeal from a judgment of the Supreme Court of the State of Oklahoma which affirmed a final decree of the District Court of Oklahoma County, Oklahoma. This Statement is submitted to show that the Supreme Court of the United States has jurisdiction of this appeal and that substantial federal questions are presented.

OPINIONS BELOW

The majority opinion and the concurring and dissenting opinion of the Supreme Court of the State of Oklahoma are reported at *322 P. 2d 179 (Okla. 1957)*. A copy of the opinions of the Supreme Court of the State of Oklahoma, and a copy of the Final Decree and the oral opinion of the District Court of Oklahoma County, Oklahoma, are reprinted herewith as Appendix A.

JURISDICTION

This suit was instituted by the Oklahoma Retail Grocers Association, Inc., on the 25th day of October, 1954; in the District Court of Oklahoma County, Oklahoma, pursuant to the Oklahoma Unfair Sales Act, to enjoin appellant from selling groceries at prices below cost as defined in the Act. The opinion of the Supreme Court of Oklahoma was rendered on the 24th day of December, 1957, and appellant's Motion for Rehearing was denied February 11, 1958. Notice of Appeal was filed with the Clerk of the Supreme Court of Oklahoma on May 8, 1958. On July 2, 1958, for good cause shown, the Chief Justice of the Supreme Court of Oklahoma enlarged the time for docketing the case to and including August 4, 1958. The jurisdiction of this Court over this appeal is conferred by Title 28, United States Code, Section 1257(2). Cases believed to sustain the jurisdiction of this Court on appeal include *Charleston Federal Savings & Loan Ass'n v. Alderson, 324 U. S.*

888, 89 L. Ed. 857 (1945); Winters v. New York, 333 U. S. 307, 92 L. Ed. 840 (1948); and *Nebbia v. New York, 291 U. S. 502, 78 L. Ed. 940 (1934).*

STATUTES INVOLVED

This appeal involves the constitutionality of the Oklahoma Unfair Sales Act (Oklahoma Statutes 1951, Title 15, Chapter 14, Sections 598.1 through 598.11). The text of the Act is reprinted herewith as Appendix B.

QUESTIONS PRESENTED

I. Whether the Oklahoma Unfair Sales Act violates the due process or equal protection clauses of the Fourteenth Amendment to the Constitution of the United States because it prohibits a retail grocer from selling at prices set for the sole purpose of meeting prices of competitors selling the same articles below their statutory cost, whether the competitor's price is lawful or unlawful.

II. Whether the Oklahoma Unfair Sales Act violates the due process or equal protection clauses of the Fourteenth Amendment to the Constitution of the United States because it unreasonably limits the type of discount for prompt payment of cash that retailers selling at statutory cost can give to trading stamps, cash register receipts and other evidences of credit, and prohibits a retailer from reducing his price on an article in an amount equal to the value of trading stamps given by a competitor selling the same article at statutory cost.

III. Whether the Oklahoma Unfair Sales Act violates the due process or equal protection clauses of the Fourteenth Amendment to the Constitution of the United States because, as here applied, it prohibits appellant from giving trading stamps, cash register receipts or other evidences of credit as a discount for prompt payment of cash which have a value in excess of 3%, while appellant's competitors are under no similar prohibition.

IV. Whether the Oklahoma Unfair Sales Act violates the due process or equal protection clauses of the Fourteenth Amendment to the Constitution of the United States because it permits the giving of trading stamps, cash register receipts and other evidences of credit in connection with retail sales at statutory cost, but wholly fails to fix any limit on the value that the trading stamps, cash register receipts and other evidences of credit may have.

STATEMENT OF THE CASE

The record here discloses a concise case history in contemporary retail competition. As concluded by the courts of Oklahoma, competition is curtailed in its consummate exercise. A merchant can neither meet the price of a competitor, nor enjoin further sales by that competitor where that competitor sells below statutory cost without the intent and the result proscribed by the Act, or sells at statutory cost and gives trading stamps.

This is precisely the situation in which this appellant finds itself.

Oklahoma, like some thirty other states, passed a below cost sales act of general application. A violation of this act has three elements:

1. A sale below cost, computed by adding invoice or replacement cost, plus freight and cartage, plus state and federal taxes, plus a markup to cover the cost of doing business of 6% in the absence of proof of a lesser cost, and
2. The intent thereby to injure competition, and
3. As a result thereof, injury to competition.

There is a defense: meeting competition in good faith. Sec. 598.7 of the Act provides, "Any retailer or wholesaler may advertise, offer to sell, or sell merchandise at a price made in good faith to meet the price of a competitor who is selling the same article or products of comparable quality at cost to him as a wholesaler or retailer." Here Oklahoma makes a radical departure from its sister states. All states, save only Oklahoma, excuse all sales below cost to meet competition or sales to meet lawful competition. Oklahoma excuses only below cost prices set to meet a competitor selling at his cost or above. If his price is below his cost, it cannot be met. Obviously, for many reasons, that competitor's price may be lawful though below cost.

With the passage of the Unfair Sales Act, price competition in certain grocery items ceased and they have since been sold at identical shelf prices, the statutory minimum, in virtually every grocery store in Oklahoma. The record establishes identical prices for some 1,700 members of appellee's Association. These items are called

"traffic items" in the trade and consist of different products which are most frequently sold, featured in advertising and used by consumers to compare prices.

In the summer of 1954 a number of grocers in the cities of Enid, Tulsa, Norman and Shawnee commenced selling numerous "traffic items" below statutory cost. Appellant met this competition with equally low prices. At the same time certain Oklahoma City merchants were giving trading stamps to customers who purchased traffic items at statutory cost. Appellant requested an opinion of its attorneys in Oklahoma as to whether it had the right to reduce its prices by an amount equal to the value of the trading stamps in order to meet the trading stamp competition even though the resulting prices would be below cost and was advised that such conduct was permissible under the Act. Acting on this advice, appellant reduced its prices on certain traffic items which had been featured by stamp giving merchants in Oklahoma City in an amount equal to the value of the trading stamps given by those competitors. Before these price reductions, appellant and the stamp merchants were selling these particular items at the same shelf prices but the stamp merchants were giving trading stamps in connection with their sales.

Appellees filed suit to enjoin appellant from further sales at the prices set to meet competition. Appellant filed a cross petition seeking to enjoin appellees from giving trading stamps with sales made at statutory cost.

At the close of the trial the District Court enjoined appellant

(1) from selling at less than statutory cost in violation of the Act except to meet the prices of competitors selling at their cost, and

(2) from reducing its prices on items sold at statutory cost by an amount equal to the value of trading stamps given by competitors with sales of the same items at the same prices.

The trial court made no finding that the below cost prices met by appellant were unlawful and refused to enjoin appellees from giving trading stamps with items sold at statutory cost.

Appellant was further enjoined from giving trading stamps having a value in excess of 3% of the sales prices of items sold at statutory cost with sales at such cost.

The Supreme Court of Oklahoma affirmed, stating appellant "* * * set illegal prices for the sole purpose of meeting prices of its competitors * * *." As to appellees, it said "* * * we hold that the giving of such stamps did not constitute a price cut or unfair competition, but such stamps merely constituted a discount for cash." Four Justices concurred in part and dissented in part.

RAISING THE FEDERAL QUESTIONS

Appellant did not contend that the Act on its face was invalid, although in Paragraph 9 of its original answer

it stated that denial to it of the right to meet competitive prices would result in an unconstitutional application of the Act. The federal constitutional questions were preserved in the Petition in Error filed in the Supreme Court of Oklahoma. The Supreme Court of Oklahoma in passing on this question said:

> "Safeway contends that the Unfair Sales Act is violative of certain provisions of the Oklahoma Constitution and the Constitution of the United States. However, the constitutionality of the Unfair Sales Act as amended, after *Englebrecht v. Day, et al., 201 Okl. 585, 208 P. 2d 538,* was upheld in *Adwon v. Oklahoma Retail Grocers Association, Inc., 204 Okl. 199, 228 P. 2d 376.* Therefore, the constitutional questions herein raised, being substantially the same as in the *Adwon* case, supra, we deem it unnecessary to consider the issue of the constitutionality of the Unfair Sales Act in the instant case."

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

The economy of this nation has enjoyed no right more fundamental than the right to compete. Indeed, more than a right, it has been an essential to success. Generally, we believe competition to be a principal foundation, a cornerstone of our technological advances and our vast material wealth. While we have for many decades recognized certain limitations on free enterprise, competition has flourished thereby because those limitations have been designed to preserve competition.

Heretofore no sanction of government has prohibited a merchant from meeting the legal prices of his competitors selling the same goods in the same market.

Heretofore no sanction of government has required a merchant to give trading stamps.[1]

The relationship of Constitution, competition, and governmental compulsion, the most significant legal problem affecting our economic well being, is a source of considerable controversy and incertitude.

For a number of years, the highest courts of the several states have struggled with statutes restrictive of competition. They have disagreed and divided. Many statutes have fallen in the last few years. Among the fallen are sales below cost acts.[2] To date, this Court has not considered such a statute.[3]

---

[1]See the note on this case, *Trade Regulations—Unfair Trade—Competition from Retailers Issuing Trading Stamps Cannot be Met by Price Reductions Equivalent to Value of Stamps, 36 Texas Law Review 691, 694*, wherein it is said, "The rule of the principal case eliminates this most potent weapon, price competition, and therefore virtually forces competitors to use trading stamps."

[2]The statutes may be divided as to types. The various types developed contemporaneously and are similar in purpose.

Forty-five states now have or have had Fair Trade Acts. The constitutionality of roughly two-thirds of these has been tested and half have failed to meet the test. The folowing states have voided these Acts: Arkansas, Colorado, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Nebraska, New Mexico, Ohio, Oregon, South Carolina, Utah and West Virginia. Four of these fell last year.

The constitutional test of below cost sales acts has been less frequent. Even so, seven of these acts have been invalidated by the following states: Arizona, Colorado, Maine, Maryland, New Jersey, Oklahoma, Pennsylvania. Oklahoma and Pennsylvania statutes were re-enacted after correcting some constitutional defects.

Related acts, including geographic price discrimination and special industry laws, have been stricken in numerous instances.

[3]The trade mark-property right justification for the Fair Trade Acts is absent here.

The people, the state legislatures, the state courts, Congress and the federal courts need an exposition of constitutional rights as related to economic competition. For such an exposition, a better, more clear-cut case than this will not be found. Squarely presented here are the following questions:

1. When can a state prohibit a merchant from meeting the lawful price of a competitor?

2. When can a state limit the vital area of retail competition to the giving of trading stamps?

3. When can a state prohibit a merchant from selling below cost for the sole purpose of meeting competition?

Oklahoma, through court interpretation of its Unfair Sales Act, has done each of these things.

The question is whether these prohibitions are "arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt and hence an unwarranted interference with individual liberty." *Nebbia v. New York, 291 U. S. 502, 539; 78 L. Ed. 940, 958 (1934).*

Question One

"The heart of our national economic policy long has been faith in the value of competition." *Standard Oil v.*

F. T. C., 340 U. S. 231, 248; 95 L. Ed. 239, 250.[1] Because of that faith we have jealously protected the competitive market. Now Oklahoma has arbitrarily prohibited and restricted competition in its most vital function: freedom to meet a price that a competitor is free to set.

> "[T]he essential quality of that series of acts or course of conduct which we call 'competition' is that which shall be the result of the free choice of the individual, and not of any legal or moral obligation or duty." *Meredith v. New Jersey Zinc & Iron Co., 37 A. 539, 543; 55 N. J. Eq. 211.*

Here appellant specifically met the prices of its competitors. Merchants selling below cost were met by equally low prices. The courts enjoined this without re-

[1] Illustrative of the course of economic theory as to the value of competition is found in the following quotes, one old, one new:

"The quantity of grocery goods, for example, which can be sold in a particular town is limited by the demand of that town and its neighborhood. The capital, therefore, which can be employed in the grocery trade cannot exceed what is sufficient to purchase that quantity. If this capital is divided between two different grocers, their competition will tend to make both of them sell cheaper than if it were in the hands of one only; and if it were divided among twenty, their competition would be just so much the greater, and the chance of their combining together in order to raise the price, just so much the less. Their competition might perhaps ruin some of themselves, but to take care of this is the business of the parties concerned, and it may safely be trusted to their discretion. It can never hurt either the consumer or the producer; on the contrary, it must tend to make the retailers both sell cheaper and buy dearer than if the whole trade was monopolized by one or two persons. *Great Books of the Western World*, Vol. 39, Adam Smith, "The Wealth of Nations," 1776, p. 156.

"It should be clear, from our experience thus far, that attempts to set up standards of 'fair competition' which are to mean something beyond the abstention from unfair methods or practices are only too often simply a cloak for the attempt to limit or eliminate competition. The notion that the entry of newcomers into a field, the advertising of prices or the lowering of prices are not "fair competition" has been repudiated by the courts and is without foundation in ethics, economics or law. These things are the very essence of competition; and they are 'fair competition' in every sense." Lee Loevinger, *The Law of Free Enterprise*, Funk & Wagnalls, N. Y. 1949, pp. 431.

gard to whether the prices met were legal. Merchants selling at cost were met by a price equal to their price less the value of the trading stamps they gave. The courts below enjoined further sales by appellant at this price and specifically refused to enjoin the merchants whose prices were met.

"[F]or the sole purpose of meeting prices of its competitors,"[5] appellant sold below cost. In addition to the sale below cost, the statute requires an unlawful purpose and effect to complete a violation. However, as now interpreted, when the price is set to meet competition, intent and effect are immaterial. This is striking treatment to accord so valuable a right. The Supreme Court of Minnesota exemplifies the only constitutional approach, holding that meeting competition would "fairly negate any claim that the prices are established to injure competition." *State v. Wolkoff, 85 N. W. 2d 401,407-408 (Minn. 1957).*

The occasions on which a merchant may sell below cost for lawful purposes are numberless. No industry in the economic history of western civilization has operated on a lower net profit in comparison to sales than our present retail grocers.[6] The sales price of most items on grocery shelves barely exceeds cost of the items. Good service promotions and prices are the chief competitive

[5]Quoted from the opinion of the Supreme Court of Oklahoma. See Appendix A.

[6]The industry leaders rarely make a 1% net profit on net sales. *Supermarket News*, the industry newspaper, in its June 30, 1958 issue, at page 1, reports that "for the first time in seven years A & P's ratio of net profits to net sales last year exceeded 1 per cent."

devices of the grocer. Special prices are an industry practice. Who will say a grocer has the intent to injure competition if from 7500 different items in his stock he sells one, or a handful, at half or two-thirds his cost?

But illegal intent is essential to the constitutionality of sales below cost statutes. *Fairmount Creameries v. Minnesota, 274 U. S. 1, 71 L. Ed. 893 (1927); State v. Packard-Bamberger & Co., 8 A. 2d 291 (S. Ct. N. J. 1939); Commonwealth v. Zasloff, 13 A. 2d 67 (S. Ct. Pa. 1940); Advisory Opinion of the Justices, 132 A. 2d 47 (Me. 1957).* Oklahoma has heretofore expressly recognized this. *Englebrecht v. Day, 208 P. 2d 538 (S. Ct. Okla. 1949).* Now it has said meeting competition selling below cost is in itself an illegal purpose. A grocer in Oklahoma can sell below his cost and invoke the aid of the State to prohibit his competitors from meeting his price.

In selling at cost less the value of trading stamps given by competitors selling at cost, appellant was doing no more than meeting competition. The essential nature of the conduct cannot be changed by calling trading stamps a discount for cash.[7] "What's in a name? That which we call a rose, by any other name would smell as sweet." If a discount for prompt payment of cash is permissible, and the Supreme Court of Oklahoma said

[7]This point was convincingly made by Justice Jackson for the four dissenters on the Oklahoma Supreme Court where he said, "Reasons which compel an accountant's conclusion do not compel the same legal conclusion. The issues are not the same." See Appendix A. See also, *Colgate-Palmolive Company v. Elm Farm Foods Co., 148 N. E. 2d 861 (Sup. Jud. Ct. Mass. 1958)*, wherein the court said: "There is no magic in the words 'cash discount'. When subjected to analysis they are merely a euphemism for what is in reality a price cut."

it is, then statutory cost in connection with cash sales has been redefined and is reduced by the amount of the permissible discount. This done, appellant's prices are as lawful as appellee's. They are not below cost.

The only possible distinction between the two prices is that appellant has given the customary discount for cash in the customary way, a net price for cash payment. Appellees, to give their discounts, buy trading stamps.[8] The economic benefit to the purchaser is the same in either instance. This is a distinction without a legal difference.[9]

The Oklahoma legislature stands mute on this discount. It has neither approved, disapproved, nor classified discounts for cash payment. It has said not a word. Just what it is about the price reduction which is prohibited that differs from trading stamps which are permitted that makes the former inimical to the public welfare and general safety does not appear.

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[8]The courts below have permitted cash register receipts and other evidences of credit as discounts for prompt payment of cash. These cannot compete with trading stamps because they lack allure and are more expensive to the merchant. The public equates the value of stamps to their trading value at retail prices, while the trading stamp companies purchase at a much lower price. Redemption rates are higher with evidences of credit redeemable in cash or merchandise at the place of purchase than with trading stamps.

[9]The U. S. Supreme Court in *Rast v. Van Deman, 240 U. S. 342, 360; 60 L. Ed. 679, 688 (1916)*, said: "* * * all of the schemes have a common character,—something is given besides that which is or is supposed to be the immediate incentive to the transaction of sale and purchase, —something of value given other than it * * *."

The proposition was forcefully stated by the New York Court of Appeals in the following terms: "No matter how one puts it, the customer who is accorded a cash discount in reality pays that much less for the article which he purchases, and this is nonetheless true, because the return is by way of merchandise rather than coin which may purchase merchandise." *Bristol-Meyers v. Picker, 96 N. E. 2d 177, 179 (Ct. App. N. Y. 1950)*. See also, *Colgate-Palmolive Company v. Max Dichter & Sons, 142 F. Supp. 545 (D. C., Mass. 1956)*.

The grave concern for competition exhibited by the highest courts of the states is not foreign to this Court. In one of its greatest decisions this Court expressly recognizes the constitutional right to freedom from arbitrary restraint:

> "The Constitution does not secure to any one liberty to conduct his business in such fashion as to inflict injury upon the public at large, or upon any substantial group of the people. Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty." *Nebbia v. New York, supra, 291 U. S. at 539; 78 L. Ed. at 958.*

Tested by these considerations, the Oklahoma Unfair Sales Act must be condemned. The most valuable business right, freedom to meet a price that a competitor is free to set, cannot be denied.

Question Two

Assuming *arguendo*, that there is a legal difference between a price at statutory cost plus trading stamps and a price at statutory cost less the value of the trading stamps, the Oklahoma courts have created a remarkable classification of methods for giving discounts for cash payment. If a merchant would give a discount for payment of cash he can do so only by trading stamps, cash register receipts, or other evidences of credit. Trading stamps are granted a State monopoly of the cash dis-

count business.[10] The benefit to the stamp industry will extend far beyond the sales at cost, since stamps will be given with all purchases by merchants using them.

The incredible vitality of the trading stamp in today's market is difficult to conceive. In 1955, trading stamp companies grossed in excess of six hundred million dollars.[11] Surveys showed half the families in the country saving stamps.[12] Retailers offering stamps are estimated to have made 12% of all retail sales in the United States in 1957.[13] Supermarkets and other food stores are the largest dispensers of trading stamps.[14] Appeal of the

[10]It is ironic that trading stamps, after half a century of legal struggle for survival, have in Oklahoma been benefited by legislation which through inadvertence permits their use to the exclusion of other forms of competition. At the same time 1955 saw bills restricting and taxing trading stamps introduced in half of the legislatures in the nation. See *Trading Stamps: A Challenge to Regulation of Price Competition, 105 U. Pa. L. Rev. 242.* Cases which have sustained legislation directly prohibiting trading stamps or placing prohibitive taxes on them include: *Rast v. Van Deman, 240 U. S. 342, 60 L. Ed. 679 (1916); Tanner v. Little, 240 U. S. 369, 60 L. Ed. 691 (1916); Pitney v. Washington, 240 U. S. 387, 60 L. Ed. 703 (1916); Gamble v. Montgomery, 39 So. 353 (1905); Lansburgh v. District of Columbia, 11 App. D. C. 512 (1897); District of Columbia v. Kraft, 35 App. D. C. 253 (1910), cert. denied 218 U. S. 673, 54 L. Ed. 1205 (1910); District of Columbia v. Gregory, 35 App. D. C. 271 (1910); cert. denied, 218 U. S. 673, 54 L. Ed. 1205 (1910); Sperry & Hutchinson Co. v. State, 122 N. E. 584 (1919); State v. Wilson, 168 Pac. 679 (1917); State v. Crosby Bros., 176 Pac. 321, 670; State v. Merchants Trading Co., 38 So. 443 (1905); State v. Underwood, 71 So. 513; State v. J. M. Seney Co., 107 Atl. 189; Fleetwood v. Read, 58 Pac. 665 (1899); Oilure Mfg. Co. v. Pidduck-Ross Co., 80 Pac. 276 (1910); Sperry & Hutchinson Co. v. Tacoma, 122 Pac. 1060 (1912); Sperry & Hutchinson Co. v. Melton, 71 S. E. 19 (1911); State ex rel. Sperry & Hutchinson Co. v. Weigle, 166 N. W. 54 (1918).* As many cases have invalidated such legislation.

[11]"Do Trading Stamps Affect Food Costs?" p. 1, Marketing Research Report No. 147 (Jan. 1957), U. S. Dept. of Agriculture.

[12]"Trading Stamp Practice and Pricing Policy," Albert Haring and Wallace O. Yoder. Interim Release (May 7, 1957), School of Business, Indiana University.

[13]"Who Profits From Trading Stamps?" Eugene R. Beem, Harvard Business Review, Nov.-Dec., 1957, pp. 123-136.

[14]"Trading Stamps," Bureau of Business Research, Indiana University School of Business, Indiana Business Report No. 21, Harvey L. Vredenberg, p. 24.

trading stamps to consumers must not be underestimated. "The reasons for strong consumer acceptance of stamps appear to be basically economic. Most stamp savers do not think store prices have been marked up as the result of stamps, so premiums are regarded as an actual plus for the family's well-being."[15]

Volume of sales usually increases substantially when a merchant commences using trading stamps.[16] A recent national survey involving 304 dealers using trading stamps shows the increases in sales attributed to the use of trading stamps in food stores for the first half of 1956 as compared to the corresponding period in 1955. Supermarkets achieved an increase in volume of sales averaging 10.2% where trading stamps were given as compared to a 6.7% average for stores not giving trading stamps.[17] It is practically an economic necessity to meet this stamp competition in some way. There is a tremendous body of trading stamp literature.[18]

In Oklahoma virtually all families will have to save stamps to get the most for their grocery dollar. This is obviously no protection to competition.

A merchant cannot give items of merchandise as a cash discount because of the combined price, tie-in sales provision of the Act.[19] A merchant cannot give cash as a

[15] "Who Profits from Trading Stamps," at pp. 125-129, supra, ft. note 13.

[16] "Do Trading Stamps Affect Food Costs," p. 2, supra, ft. note 11.

[17] "How Trading Stamps Affect Volume and Earnings," J. J. Trout, Progressive Grocer, vol. 35(8):48-55 (Aug., 1956).

[18] See for example the six page bibliography in "Trading Stamps," supra, ft. note 14.

[19] See Sec. 598.2(d), Oklahoma Unfair Sales Act.

cash discount because the courts here prohibited Safeway from just this. Only trading stamps and evidences of credit are left.

Oklahoma can permit discounts, prohibit discounts, or make reasonable classification of permissible discounts. It has done none of these.

This arbitrary restriction is wholly irrelevant to any purpose the legislature was free to adopt. There was no evil in methods of discounting for cash payment before the legislature. These discounts were not even considered in connection with sales at retail. Through advertence the legislature could not classify discounts as has been done. Through inadvertence the same end cannot be achieved.

This is an unwarranted interference with individual liberty, the denial of a substantial right. Freedom of choice is denied, yet economic well being, if not survival, requires use of the discount where competition does so. It is no wonder appellant now gives trading stamps in Oklahoma.

Why should the merchants of Oklahoma be refused the right to give the type of discount they choose? We are a commercial people. Many Americans express themselves only through their business for this is their chief concern, their life. To stifle needlessly that expression is as crippling to those persons as is refusal of the right to the anarchist to express his political philosophy in Boston Commons.

Why should the citizens of Oklahoma be denied the right to buy at the lowest net price prescribed by the legislature? Why should they be forced to buy two things, that which they desire and a trading stamp?

As construed, the Oklahoma Unfair Sales Act is arbitrary, discriminatory, demonstrably irrevelent to any policy the legislature was free to adopt and a tragically unnecessary and unwarranted interference with individual liberty.

Questions Three and Four

These two questions arise not because of the statute but because of its interpretation by the Supreme Court of Oklahoma. Without any support in the language of the statute and without any evidence of such an intention on the part of the Legislature, five Justices of the Supreme Court of Oklahoma have found that discounts for cash payment made in connection with sales at retail do not violate the Unfair Sales Act. Four Justices have said, "The Act does not authorize discounts for cash in retail sales."[20]

By permitting the discount for cash in the form of trading stamps, the courts created more problems than they solved. There is no fixed value to a trading stamp. Use of stamps can easily destroy the efficacy of the statute.[21] Once permitted, they must then be regulated,

[20] See Appendix A.

[21] Waller, Herman S., *Crafty Evasions Threaten Fair Trade*, pp. 1-28. Legal Counsel for National Association of Retail Druggists, 1955. Anti-concession clauses have been added to some twenty state Fair Trade Acts. They prohibit the giving of trading stamps in connection with sales at the fair trade price.

for the merchant can give a discount of any value he might choose. The Oklahoma courts, having permitted the discount, have attempted to regulate it piecemeal. Without any evidence in the record, the trial court here fixed a limit on the value of trading stamps that appellant might give at 3%. Neither a court of law nor a court of equity can meet the problem this way for there can be no equal protection. No other merchant in the State of Oklahoma is limited as is this appellant. It is inconceivable that every district court in the State could arrive at the 3% figure imposed upon this appellant in the cases which come before them.

Moreover, violation of this Act is a misdemeanor punishable by a fine. Yet no merchant in Oklahoma can know whether his price is in violation of the Act because the Act affords him no opportunity to determine whether a discount for cash that he might give in connection with a sale at retail is within the limits that a court might later fix on the discount. This Court has said:

> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process at law." *Connally v. General Construction Co., 269 U. S. 385, 70 L. ed. 322, 328 (1926).*

CONCLUSION

This appeal brings before this Court substantial federal questions both in terms of the far-reaching legal questions involved and in the practical effect on our national economic policy. The questions presented are so substantial as to require plenary consideration with briefs on the merits and oral argument, for their resolution.

Respectfully submitted,

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PROOF OF SERVICE

I, Ramsey Clark, one of the attorneys for Safeway Stores, Incorporated, Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the day of , 1958, I served copies of the foregoing Jurisdictional Statement on the several parties thereto, as follows:

On Oklahoma Retail Grocers Association, Inc., a corporation, and Louie J. Speed, Inc., a corporation, by mailing copies in duly addressed envelopes, with airmail postage prepaid, to their respective attorneys of record, as follows:

Miskovsky & Miskovsky, Hightower Building, Oklahoma City, Oklahoma;

William J. Holloway, Sr., First National Building, Oklahoma City, Oklahoma;

Looney, Watts, Looney & Nichols, First National Building, Oklahoma City, Oklahoma;

Samuel M. Lane, 26 Broadway, New York City, New York.

RAMSEY CLARK,
1900 Adolphus Tower,
Dallas 2, Texas,
Attorney for Safeway Stores, Incorporated.

APPENDIX A

1. Decision of the Supreme Court of the State of Oklahoma.

Safeway Stores, Incorporated v. Oklahoma Retail Grocers Association, Inc., and Louie J. Speed, Inc.

In the Supreme Court of the State of Oklahoma. No. 37326. Filed December 24, 1957.

Appeal from the District Court of Oklahoma County, Oklahoma. Hon. F. B. H. SPELLMAN, Assigned Judge.

JOHNSON, Justice: This is an action brought by Oklahoma Retail Grocers Association, Inc., a corporation against Safeway Stores, Incorporated, a foreign corporation, to enjoin it from selling groceries below cost in violation of the Oklahoma Unfair Sales Act, 15 O. S. 1951, Sec. 598.1-598.11.

The Safeway Company by cross-petition made Louie J. Speed, Inc., a corporation, and other grocers parties defendant. Safeway in its cross-petition asked for injunctive relief against Speed, et al., alleging that they, as its competitors, had violated the Unfair Sales Act.

Safeway in its answer admitted selling groceries below minimum statutory cost, but denied that its advertisement, offer for sale, or sale of the alleged articles, was in violation of the Oklahoma Unfair Sales Act, and alleged that its prices were made in good faith to meet the prices of its competitors who were, on the dates complained of, selling

the same articles or products of comparable quality at such prices, or below minimum cost by giving trading stamps in violation of the Unfair Sales Act.

In the trial of the case Speed admitted that it issued single trading stamps to its customers on all purchases of groceries, and on certain days that it issued double stamps, and that sales below the statutory cost were accomplished by use of even the single stamps, but contended that the stamps were in the nature of a cash discount and not violative of the Unfair Sales Act.

The court issued a permanent injunction against Safeway prohibiting it from advertising, offering for sale or selling merchandise below the minimum prices as fixed by the Oklahoma Unfair Sales Act.

As to Speed, the court found that the giving of stamps in accordance with the trading stamp contract was in the nature of a cash discount and not in violation of the Unfair Sales Act, but made permanent the injunction restraining Speed from issuing or giving double stamps to its customers with purchases of merchandise.

Safeway and the Retail Grocers Association and, by agreement, Speed, were the only parties involved in the trial, and Safeway alone appeals.

Safeway contends that the Unfair Sales Act is violative of certain provisions of the Oklahoma Constitution and the Constitution of the United States. However, the constitutionality of the Unfair Sales Act as amended, after *Englebrecht v. Day et al.*, 201 Okl. 585, 208 P. 2d 538, was up-

held in *Adwon v. Oklahoma Retail Grocers Association, Inc.*, 204 Okl. 199, 228 P. 2d 376. Therefore, the constitutional questions herein raised, being substantially the same as in the *Adwon* case, *supra*, we deem it unnecessary to consider the issue of the constitutionality of the Unfair Sales Act in the instant case.

Many cases from other jurisdictions and authorities have been cited and quoted from by all parties involved in this lawsuit. But a study of them clearly indicates a large variety of statutes, differing materially from ours in concept, if not in purpose, to such an extent that we deem it unnecessary to refer to all such cases herein by citing and considering them.

We are concerned herein only in the interpretation and application of Oklahoma's Unfair Sales Act as applied to the particular facts in this case. See 15 O. S. 1951. Sec. 598.1, *et seq.*, Laws of 1949, p. 103, Sec. 1, *et seq.* We must construe and interpret the Unfair Sales Act so as to give it practical meaning and effect within the legislative intent. However, until a proper factual case is presented which requires a clear determination and offers a practical situation in which all the conflicting problems and considerations of the area involved are [present,] this court will refrain from theorizing. This is particularly true in cases involving the field of economic regulation. The eventual goal of any interpretation must be viewed in the practical situation existing in the field to be regulated.

Safeway contends that it was not and is not amenable to injunctive restraint from admittedly selling merchandise below the stautory cost under the Unfair Sales Act, 15 O. S. 1951, Sec. 598.3, because under Sec. 598.7 of the Act it had the right to advertise, offer to sell, or sell merchandise at a price made in good faith to meet the price of a competitor who was selling the same article or products of comparable quality at cost to it as a retailer. It seeks to justify its price cutting action on the ground that when its competitors gave trading stamps, cash register receipts or things of like nature of such value with their sales of merchandise, which in effect reduced the price of their merchandise below minimum cost, that that constituted sales below cost or price cutting in violation of the Unfair Sales Act, and that it had a right to meet such competition by reducing its prices to the extent of the value of the trading stamps.

In other words, Safeway contends that its action was justifiable because of the alleged wrongful acts of its competitors, and that its actions in the premises constituted "good faith" in accord with Sec. 598.7, which exempted it from the injunctive provisions of Sec. 598.5 of the Unfair Sales Act. We do not agree.

In this connection our attention has been called to the recent case (10-4-57) of *State v. Wolkoff*, (Minn.) 85 N. W. 2nd 401, wherein it was held that "(I)f a merchant in good faith sets the price of an article on the basis of a competitor's price, which price he in good faith believes to be a *legal one*, there is no violation," which clearly is not the case herein. In the instant case, Safeway obviously and

admittedly did not, in good faith, set the price of its articles which were subject to the Unfair Sales Act on the basis of its competitors' prices, which it in good faith believed to be legal prices under the Unfair Sales Act, but on the contrary it set illegal prices for the sole purpose of meeting prices of its competitors, which it thought to be illegal.

In considering unfair sales practice acts from a procedural viewpoint, commentators have observed the wisdom of the legislatures in providing the remedy by injunction, and the increasing tendency of the courts to enjoin, at the suit of competitors, repeated violations affecting the unfair conduct of business. Availability of the injunctive remedy and that of interlocutory decree based on actions therefor precludes the practice indulged in by many fair minded competitors immediately to meet competition by resorting to the same practices themselves. Since actions for injunctions may be filed by a trade association for the benefit of all its members, the practice of resorting to the same practices to meet competition is materially reduced, for the natural restraint against suing a competitor is less present in the seeking of immediate relief against threatened piratical price wars. 10 So. C. L. Rev. 22. See also 21 Iowa L. Rev. 175, 236; 42 Harv. L. Rev. 693; 13 Tex. L. Rev. 136; and 25 Cal. L. Rev. 1088, and cited cases.

We are of the opinion that this injunction granted by the trial court against Safeway was proper, because under our statute the appropriate remedy was by injunction and not by retaliation or retaliatory action, such as was prac-

ticed by Safeway. In this respect the judgment of the trial court is affirmed.

We come now to Safeway's cross-petition and its contention that the trial court erred in refusing to enjoin Speed and restrain him from distributing trading stamps with articles priced at the minimum under the Unfair Sales Act.

Safeway's cross-petition charged that Speed by the use of trading stamps was selling his merchandise below the statutory minimum cost in violation of the Unfair Sales Act.

Speed in his answer to the cross-petition admitted that he was a retail grocer, in competition with Safeway; that for a number of years he had been distributing S & H trading stamps with all merchandise, including those items which were offered for sale at the statutory minimum; that the stamps were worth approximately 2.5 percent of the sales price of the merchandise, but did not deduct the sales price because they constituted the only practical means of allowing a discount for cash.

Speed defends on the grounds that single trading stamps (the court having enjoined him from issuing double stamps on his sales) do not reduce the price of merchandise, but constitute only a discount for cash on his sales.

In recent years there have been many appellate court decisions dealing with the subject of trading stamps, and several Law Review articles have been written concerning them and their legal effect upon economic regulatory measures. See cited authorities *supra* and *infra*.

An extensive article appears in 105 Pa. L. Rev. 242, *et seq.* entitled "Trading Stamps: A Challenge to Regulation of Price Control" wherein in referring to trading stamps it is said (quoting from Wall St. Journal, April 23, 1956, p. 1, col. 6.):

> "Assailed by some 'as a costly device that raises family food bills' and hotly defended by others as 'a perfectly legal promotional tool,' trading stamps have become a center of controversy in the merchandising field. Though stamp plans have enjoyed a rapid upsurge in growth since World War II, the idea itself is over fifty years old." (See 24 Tenn. L. Rev. 557-58, 1956.)

Description of the various stamp plans may be found in 24 Tenn. L. Rev. *supra.* However, there being no statute in Oklahoma prohibiting the use of trading stamps as such, we are concerned herein only with the application of and/or relation of trading stamps to unfair competition and below cost sales under our statute; see "The Unfair Sales Act," Laws 1949, p. 103, Sec. 1, *et seq.*; 15 O. S. 1951, Sec. 598.1, *et seq.*, which as noted by the title of the Act, is designated as

> "An Act defining and prohibiting unfair sales practices with a view to preventing the advertising, offering for sale, or the selling of merchandise below cost for the purpose of injuring competitors, destroying, or substantially lessening competition; providing remedies for violation thereof; establishing a penalty therefor, etc."

The question of whether giving trading stamps in the usual manner with merchandise sold at the statutory minimum constitutes a disguised form of price cutting in violation of our Unfair Sales Act, or whether they (trading

stamps) are to be regarded as a discount for cash, as a means of advertising, a device to entice customers and to retain their trade, is new in this jurisdiction, and our decision on this matter will be one of first impression. It is a question upon which appellate courts, economists and accountants have diverse and conflicting opinions.

The question has, however, been considered by the courts of California and Utah, which states have statutes similar and comparable to ours in content and substantially identical to ours in purpose on unfair trade practices and fair trade contracts. See Cal. Bus. & Prof. Code, Fair Trade Contracts, Sec. 16900-16905, Unfair Trade Practices, 17000-17100, and *Food and Grocery Bureau v. Garfield* (Cal.) 125 P. 2d 3; *Weco Products Co. v. Mid-City Cut Rate Drug Stores, et al.* (Cal.) 131 P. 2d 856, and cited cases. See also the Utah case, *Trade Commission v. Bush* (1953), 259 P. 2d 304, and cited cases, and Utah statute cited in footnote of the case.

In the case of *Food and Grocery Bureau v. Garfield, supra*, there was no contention as herein that the use of the stamps resulted in sales of commodities below cost under the Unfair Sales Practices Act, but it was said in that case that

> "(I)t is well settled by the decisions of this Court, as well as other jurisdictions, that the practice of merchants in issuing trading stamps with the purchase of articles is merely a method of discounting bills in consideration for the immediate payment of cash." Citing cases.

In the California case of *Weco Products Co. v. Mid-City Cut Rate Drug Stores, et al., supra*, the question of price

cutting or selling below cost was involved, and the factual situation was similar, if not identical, to the case herein, except that the latter case involved the Fair Trade Act and the case before us involves the Unfair Sales Practices Act which was true of the California case of *Food and Grocery Bureau v. Garfield, supra*, but the court made no distinction in the application of the cash discount rule to the Fair Trade and Unfair Sales Practices Acts. In the *Weco Products Co.* case, *supra*, it was said:

> "Defendant, even antedating plaintiff's availing itself of the protection of the Fair Trade Act, regularly gave to his customers trading stamps at the rate of one stamp with each ten cents of the sale price of articles purchased. These were given on purchases of any of the thousand and one things sold in defendant's drug stores, with the exception of liquors. At infrequent intervals there were 'double stamp days,' when two stamps were given for each unit of sale price. Upon each stamp was imprinted 'Cash Discount Stamp.' Each stamp had a cash value of two mills. Stamps were given to every customer paying cash at the time of purchase and requesting trading stamps. They were redeemed by defendant upon presentation of five hundred stamps collected in a book given by defendant to customers for that purpose, redemption value for a book of five hundred being $1.00 cash or, at the option of the purchaser, $1.25 merchandise.
>
> "Inasmuch as trading stamps were given by defendant upon sales of plaintiff's commodities, plaintiff contends that the scheduled minimum prices of his commodities were reduced by exactly the amount of the cash value of the stamps, to wit, by two mills upon each ten cents. In other words, plaintiff insists that the giving of trading stamps was in reality a disguised form of price cutting.

"The question before us for consideration, therefore, may be stated as follows: Does the giving of trading stamps, redeemable for cash or merchandise, constitute a violation of the Fair Trade Act when such stamps are given with commodities sold at the minimum prices stipulated by the producer under said act? This query is best answered, we believe, by a consideration of the nature and purpose of the trading stamp coupons. Are they to be regarded as a discount for cash, as a means of advertising, a device to entice customers and to retain their trade, or do they simply represent a cut in the sale price of the articles with which they are given? If the latter, they accomplish a cut in the established price of merchandise; and where such merchandise is sold at minimum Fair Trade Act prices, the giving of trading stamps then amounts to a sale below such prices.

"If, however, the stamps are given by the merchant in the nature of an inducement to customers to attract them to his store, the practice is in the nature of an advertising device, and is no more to be condemned as violative of the Fair Trade Act than would be such commonly employed devices as free parking room, care of infants and other plans offered by some mercantile establishments in competition with their rivals. Free parking for automobiles of customers might be said to result in a lesser price paid by a customer for goods purchased, yet it could hardly be reasonably contended that thereby a violation of the Fair Trade Act had been worked.

"Neither can it be asserted that by giving discounts for cash the terms of the statute in question are contravened. A cash discount is a reward for prompt payment. It is a trade practice long established, and is authoritatively recognized as being not a deduction from the purchase price. Montgomery, Auditing Theory and Practice, pp. 499-500.

"*Consideration of such authorities as are available leads us to the conclusion that the giving of trading*

stamps as in the instant now before us does not effect a reduction in the price of the articles sold such as to constitute a violation of the Fair Trade Act. The matter has not been passed upon by the appellate courts of this state. *However, aside from the consideration of the Fair Trade Act, the status of trading stamps is definitely fixed in this state as being a discount for 'the immediate payment of cash.'* This pronouncement finds its latest expression in the case of *Food and Grocery Bureau v. Garfield*, 20 Cal. 2d 228, 125 P. 2d 3, 5, decided April 28, 1942, where the defendant is the same as in the instant case and where the very trading stamps as in the instant case and where the very trading stamps here involved were under consideration. *It is true that the Food and Grocery Bureau case involved a different statute, the Unfair Practices Act rather than the Fair Trade Act, but the ruling of the court must be regarded as conclusive of the status of the trading stamp in commercial retail business.*

" *'It must be concluded,'* says the court in the Unfair Practices Act case, *'that the trading stamp plan adopted by the appellant * * * is a discount given the customer in consideration of his paying cash.'* And at page 6 of 125 P. 2d: *'It is well settled by the decisions of this Court, as well as those in other jurisdictions, that the practice of merchants in issuing trading stamps with the purchase of articles is merely a method of discounting bills in consideration for the immediate payment of cash.'*

"This latter pronouncement is buttressed by numerous citations to decisions in California and other jurisdictions, where trading stamps are characterized as 'merely one way of discounting bills in consideration for immediate payment in cash.' *Ex parte Hutchinson*, C. C., 137 F. 950, 951; 'a benefit to the customer, who practically receives a discount, and who will buy more cautiously and judiciously if he pays cash,' *Winston v. Beeson*, 135 N. C. 271, 47 S. E. 457, 461, 65 L. R. A. 167, and 'a convenient means of allowing or granting

a discount to the merchants' customers on small as well as on large purchases which were paid for in cash', *State v. Holtgreve*, 58 Utah 563, 200 P. 894, 897, 26 A. L. R. 696.

"To denominate appellant's trading stamp plan as a device for giving a discount for cash payment on merchandise, rather than as a cut in price upon the articles sold, gains force when we consider that the stamps are given uniformly and without regard to the type of goods sold or the purchaser of the same. The only condition is that cash be paid for the purchases. Respondent's 'Fair Trade' minimum-priced articles are not singled out by appellant as objects to which alone the trading stamp privileges attach. No discrimination is made for or against them. The policy may be said to be of uniform application both as to goods sold and as to purchasers of the same, and logically falls into the classification of 'cash discount' rather than 'price cut' " (Italics ours).

The California rule is expounded in the above quotation holding that giving of trading stamps with purchases of merchandise sold at the minimum price under the Unfair Sales Practice Act is not a violation of the Act because the stamps represent a "cash discount" which, according to accounting procedure, is a cost of selling rather than a reduction in price, is a rule of long standing. In 105 Pa. L. Rev. 248, in discussing discounting procedures, it was said:

"While in the case of stamps a stronger argument may be made for treatment as a selling cost, since seller receives in cash the full list price regardless of the discount in stamps and must therefore account for the cash income as well as for his payment to the stamp company for the use of the stamps."

As early as 1904 in *Ex parte Hutchinson*, 137 Fed. 949, the Court, in nullifying anti-trading stamp legislation, said:

> ". . . (T)he giving of trading stamps is merely one way of discounting bills in consideration for immediate payment in cash, which is a common practice of merchants, and is doubtless a popular method, and advantageous to all concerned, and it is not obnoxious to public policy. . . ."

In the same year (1904) in *Winston v. Beeson*, 135 N. C. 271, 47 S. E. 457, the court in holding that the issuance of S & H stamps did not constitute a "gift enterprise" said:

> "We can discern no practical difference between this arrangement of the parties and one by which the merchant agrees to discount his bills where cash is paid by his customer at the time of purchase, and the giving of stamps redeemable at a store of another in goods to be selected by the holder, instead of an actual discount by the merchant, does not in law vary the case or change the real and substantial character of the transaction * * *"

In 1922, in the case of *Sperry & Hutchinson Co. v. Siegel-Cooper & Co.*, 225 Ill. App. 540, aff'd 309 Ill. 193, 140 N. E. 864, (1923) in 225 Ill. at page 548, the court referred to the practice as follows:

> "The practice of giving trading stamps to customers buying merchandise at retail constitutes a method of discounting the bills in consideration of prompt payment in cash. This is a common practice among merchants advantageous to all concerned. * * *"

In 1942 the same rule was applied in *Food and Grocery Bureau Inc. v. Garfield, supra.*

In 1951 in *Sperry & Hutchinson Co. v. Hudson*, 190 Ore. 458, 226 P. 2d 501, the court said:

> "In a practical sense, the issuance of these trading stamps to cash customers is simply a method adopted for giving these purchasers a discount for cash. By the use of these stamps discounts are available on small purchases. As explained by the witness Shirer, vice president of plaintiff corporation: 'There is no coin small enough to give a discount on a ten or fifteen cent purchase.' By the issuance of one of these stamps for each ten cent purchase, such a discount is made possible."

In 1954 in *Sperry & Hutchinson v. Margetts*, 15 N. J. 203, 104 A. 2d 310, the court held that giving trading stamps was a form of discount for cash and "should be treated as a non-operating item, rather than as a deduction from sales price."

And as late as December of 1956, in *Gever v. American Stores Co.*, 487 Pa. 206, 212, 127 A. 2d 694, the court said:

> "Viewed realistically, the giving of trading stamps may be regarded as nothing more than the equivalent of a normal cash discount, which is merely a term of payment and not a price reduction. Indeed, in a sense, the stamps have no value in themselves but acquire it only if the stipulation amount of other purchases is made. They cannot be regarded as cutting prices any more than free delivery service or free parking could be so regarded although these are practices which obviously save money for the customers of stores offering such advantages. Accordingly, the use of trading stamps, pursued as a general business practice by a commercial establishment, does not violate either the letter or the spirit of the Fair Trade Act."

Generally, the law of trade regulations has moved swiftly, and our statutes relating thereto are relatively new; how-

ever, from an examination of our statutes and those of other states, together with appellate court decisions construing same, we conclude that the weight of law, logic and reason clearly and distinctly show that the practice of giving trading stamps in the usual customary manner does not amount to, nor will it sustain a charge of price cutting.

The trial court did not err in refusing injunctive relief to force Speed, who was giving single trading stamps in the usual manner and in accord with a court order enjoining him from giving double stamps, to price his merchandise at statutory markup plus the value of the single stamps issued in the usual manner to the consumers, and we hold that the giving of such stamps did not constitute a price cut or unfair competition, but that such stamps merely constituted a discount for cash.

Therefore the judgment as to Speed is affirmed.

Concur: WELCH, C. J., CORN, V. C. J., and DAVISON and CARLILE, JJ. Concur in part and dissent in part: HALLEY, WILLIAMS, BLACKBIRD, and JACKSON, JJ.

JACKSON, Justice: Concurring in part and dissenting in part.

Sales at retail below cost, as defined in the Act, are prohibited. 15 O. S. 1951, §598.3.

Speed is selling, or giving, two articles for the price of one. Speed does not admit that this constitutes selling below cost nor does the majority opinion specifically so hold. Speed argues, and the majority agrees, that Speed is giving a discount for cash.

The Act does not authorize discounts for cash in retail sales. It does not authorize any scheme or device that would result in sales below "cost to the retailer." We are not dealing herein with sales at wholesale or by the manufacturer wherein discounts for cash appear to be authorized by §598.2(a) of the Act.

Insofar as material here §598.2(a) defines "cost to the retailer" in substance as invoice cost, plus freight, plus a 6 percent markup to cover a part of the cost of doing business.

Speed was selling items at "cost to the retailer" (Speed) but in addition was giving trading stamps to the purchaser. The stamps were valued at 2.5 percent. That is, if a pound of coffee cost Speed $1.00, as defined in "cost to the retailer," Speed was selling the coffee at $1.00 and giving the customer a stamp.

Even if it could be said that a cash discount by the retailer is authorized, the foregoing practice does not constitute a discount for cash in the ordinary acceptance or understanding of the term. A "discount for cash" ordinarily connotes a taking away, or reduction. The word "discount" is defined in Webster's New International Dictionary as follows:

> "Discount. 1. To deduct from an account, debt, charge, or the like; to make an abatement of; as, to discount a per cent of a bill for early payment."

In Black's Law Dictionary "Discount" is defined as follows:

> "Discount. In a general sense, an allowance or deduction made from a gross sum on any account whatever."

In Black's Law Dictionary "Cash Discount" is defined as follows:

> "A deduction from billed price which seller allows for payment within a certain time. *Leonard v. U. S.*, Ct. Cl., 7 F. Supp. 295, 297."

Speed is not giving a discount for cash but is selling two articles for the price of one. Under tthe illustration above given Speed is selling a pound of coffee and a stamp for $1.00 which, together, cost One Dollars and Two and One-Half cents. This is contrary to an express provision of the statute. §598.2(d) provides in substance that when one or more items are advertised or sold with one or more other items at a combined price, or offered as a gift, or given with the sale of any one or more other items, each of said items shall be deemed to be advertised or sold, and the price of each item named shall be governed by the definition of "cost to the retailer."

We have been furnished extensive briefs citing decisions from other jurisdictions. Most of these decisions seem to be influenced by experts in the field of accounting and auditing. Experts in these fields testified in this case. Reasons which compel an accountant's conclusion do not compel the same legal conclusion. The issues are not the same. Accountants are concerned with auditing principles. We are concerned with the meaning of the Act as intended by the Legislature.

In my opinion the injunction against Safeway was proper. Safeway does not contend that it has a right to sell below cost. It does contend that it had a right to meet

Speed's prices. §598.7 of the Act authorizes a retailer to sell merchandise at a price made in good faith to meet the price of a competitor who is selling the same article at cost to him (competitor). Safeway was taking 2.5 percent from cost. Speed was adding or giving 2.5 percent above cost. But if it could be admitted that Safeway was meeting competition it was meeting unlawful competition. An illegal price on Speed's part would not authorize an illegal price on Safeway's part. This is one of the evils that the Act seeks to prevent.

For the reasons assigned, I respectfully concur in the order enjoining Safeway from selling below statutory cost and dissent to the opinion wherein it authorizes Speed to give stamps on articles sold at statutory cost.

I am authorized to say that HALLEY and BLACKBIRD, JJ. concur in the views herein expressed.

2. Final Decree of the District Court of Oklahoma County, State of Oklahoma.

IN THE DISTRICT COURT
OF OKLAHOMA COUNTY, STATE OF OKLAHOMA

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC.,
a corporation,

Plaintiff,

v.

SAFEWAY STORES, INC.,
a foreign corporation,

Defendant.

No. 134,533.

FINAL DECREE

This cause came on regularly for trial on the 17th, 18th and 21st days of October, 1955, before F. B. H. SPELLMAN, Assigned Judge of the District Court within and for Oklahoma County, State of Oklahoma, sitting without a jury, upon the petition of the plaintiff, Oklahoma Retail Grocers Association, Inc., a corporation, and the cross-petition of the defendant, Safeway Stores, Inc., a corporation, against the plaintiff, Louie J. Speed, Inc., d.b.a. Speed's Food Market #1; and

MISKOVSKY and MISKOVSKY, by GEORGE MISKOVSKY: W. J. HOLLOWAY, SR.: LOONEY, WATTS, ROSS, LOONEY & NICHOLS, by M. A. Ned LOONEY and CLYDE J. WATTS: DAVID S. MACLAY (of New

York City); and CASEY, LANE & MITTENDORF (of New York City), by SAMUEL M. LANE and ROBERT BESHAR, appeared as counsel for the plaintiffs; and

EMBRY, CROWE, TOLBERT, BOXLEY & JOHNSON, by V. P. CROWE and JOHN W. SWINFORD, appeared as counsel for the defendant; and

The Court, having heard the testimony and having examined the proofs offered by the respective parties, and being fully advised in the premises, and having filed herein its findings of fact and conclusions of law, summarized as follows:

1. That, on the dates set forth in plaintiff's petition, in Oklahoma City, Midwest City, Tulsa, Enid, Shawnee, and Norman, defendant, Safeway Stores, Inc., a foreign corporation, and the agents, servants, clerks, and employees of said defendant, and all persons acting by or under the authority of said defendant, did advertise for sale, offer for sale, and sell certain selected traffic items of merchandise at the prices therein set forth, all of which prices were below the minimum price allowed by the Oklahoma "Unfair Sales Act".

2. That, on the dates set forth in plaintiff's petition, in Oklahoma City and Midwest City, when defendant, Safeway Stores, Inc., a foreign corporation, and the agents, servants, clerks, and employees of said defendant, and all persons acting by or under the authority of said defendant, reduced its prices as aforesaid, below cost to the retailer, allegedly to offset in good faith the value of trading stamps issued as a discount for the prompt payment of cash by certain of defendant's competitors, such advertising for sale, offering for sale, and selling at less than cost to the retailer was not in good faith to meet the prices of competitors selling the articles at cost to them as retailers as de-

fined by the Oklahoma "Unfair Sales Act"; and such advertising for sale, offering for sale, and selling by the defendant, Safeway Stores, Inc., was without legal justification.

3. That, on the dates set forth in plaintiff's petition, in Tulsa, Enid, Shawnee, and Norman, when defendant, Safeway Stores, Inc., a foreign corporation, and the agents, servants, clerks, and employees of said defendant, and all persons acting by or under the authority of said defendant, reduced its prices below cost to the retailer as aforesaid, allegedly to meet in good faith the prices of competitors who were on those dates selling the same articles or products of comparable quality at such prices, such advertising for sale, offering for sale, and selling by the defendant, Safeway Stores, Inc., at said reduced prices was not in good faith to meet the prices of competitors selling the articles at cost to them as defined by the Oklahoma "Unfair Sales Act" but was the meeting of prices which the defendant, Safeway Stores, Inc., either knew or had reason to know were illegal prices and was therefore without legal justification.

4. That, on the dates set forth in plaintiff's petition, in Oklahoma City, Midwest City, Tulsa, Enid, Shawnee, and Norman, defendant, Safeway Stores, Inc., a foreign corporation, and the agents, servants, clerks, and employees of said defendant, and all persons acting by or under the authority of said defendant, did advertise for sale, offer for sale, and sell the specified items of merchandise at less than cost to the retailer as defined by the Oklahoma "Unfair Sales Act" with the intent and purpose of unfairly diverting trade from its competitors, which acts constituted unfair competition, were contrary to public policy, and were in violation of the Oklahoma "Unfair Sales Act".

5. That, on the dates alleged in defendant's cross-petition, the plaintiff, Louie J. Speed, Inc., d.b.a. Speed's Food Market #1, and the agents, servants, clerks, and employees of said plaintiff, and all persons

acting by or under the authority of said plaintiff, by the acts of selling merchandise at cost to the retailer as defined by the Oklahoma "Unfair Sales Act" and issuing trading stamps therewith as a discount for the prompt payment of cash did not thereby advertise for sale, offer for sale, or sell merchandise, as alleged, at a price lower than the minimum price allowed by the Oklahoma "Unfair Sales Act".

6. That the issuing of single trading stamps, in accordance with the trading stamp contract, said trading stamps having a value not in excess of three percent of the purchase price of the merchandise, constitutes a discount for the prompt payment of cash, which discount does not reduce the price in violation of the Oklahoma "Unfair Sales Act".

NOW, THEREFORE, BY REASON OF THE LAW AND THE FINDINGS AFORESAID:

IT IS HEREBY ORDERED, ADJUDGED and DECREED by the Court that the defendant, Safeway Stores, Inc., a foreign corporation, and the agents, servants, clerks, and employees of said defendant, and all persons acting by or under the authority of said defendant, be, and they are each hereby perpetually enjoined and restrained from advertising for sale, offering for sale, and selling, at retail, any items of merchandise handled by defendant, in or through any of the stores of said defendant within the State of Oklahoma, at prices which are less than cost to the retailer as defined in the Oklahoma "Unfair Sales Act" and in violation of the provisions of said "Unfair Sales Act", except to meet in good faith the prices of competitors who are selling the same articles or products of comparable quality at cost to them as retailers as defined in the Oklahoma "Unfair Sales Act", and except in instances of other

exempted sales as provided in Section 598.6 of said Oklahoma "Unfair Sales Act."

It is further ORDERED, ADJUDGED and DECREED by the Court that said defendant, Safeway Stores, Inc., a foreign corporation, and the agents, servants, clerks and employees of said defendant, and all persons acting by or under the authority of said defendant, be, and they are each hereby perpetually enjoined and restrained from advertising the giving or issuance of, and giving or issuing, any trading stamps, cash register receipts, or other evidences of credit issued as a discount for prompt payment of cash, of a value in "excess of three percent" of the selling price of any merchandise handled by defendant, with the sale of any merchandise advertised for sale, offered for sale, or sold by said defendant at cost to the retailer as defined in the Oklahoma "Unfair Sales Act".

It is further ORDERED, ADJUDGED and DECREED by the Court that the defendant's application for a permanent injunction against the plaintiff, Louie J. Speed, Inc., d.b.a. Speed's Food Market #1, to enjoin said plaintiff from giving or issuing single trading stamps with articles of merchandise advertised or sold at cost to the retailer as defined in the Oklahoma "Unfair Sales Act", be, and the same is hereby denied.

It is further ORDERED, ADJUDGED and DECREED by the Court that the plaintiff, Louie J. Speed, Inc., d.b.a. Speed's Food Market #1, and the agents, servants, clerks, and employees of said plaintiff, and all persons acting by or under the authority of said plaintiff, be, and they are

each hereby perpetually enjoined and restrained from advertising the giving or issuance, of, and giving or issuing, any trading stamps, cash register receipts, or other evidences of credit issued as a discount for the prompt payment of cash, of a value in excess of three percent of the selling price of any merchandise handled by plaintiff, with the sale of any merchandise advertised for sale, offered for sale, or sold by plaintiff at cost to the retailer as defined in the Oklahoma "Unfair Sales Act".

It is further ORDERED by the Court that the plaintiff, Oklahoma Retail Grocers Association, Inc., a corporation, recover of the defendant, Safeway Stores, Inc., a foreign corporation, its costs in this action, taxed at $236.70.

To all of which findings, orders, judgment, and decree, the defendant EXCEPTS, and its EXCEPTIONS are allowed.

ENTERED in open court on October 21st, 1955; and signed this 9th day of December, 1955.

F. B. H. SPELLMAN

F. B. H. SPELLMAN
Assigned District Judge.

3. Oral Opinion of the District Court of Oklahoma County, State of Oklahoma.

BY THE COURT:

Gentlemen, as the Court understands it, this is an action wherein plaintiff, as a Trade Association, sues the defendant, Safeway Company, praying for an Order restraining the defendant from violating the provisions of the Oklahoma Unfair Sales Act, as set out in Title 15, O.S.A., Sections 598.1 to 598.11, inclusive, in the following particulars: That the defendant, Safeway, did, on certain dates, as set forth in the Petition of the plaintiff, advertise, offer for sale, and did sell certain articles of merchandise at retail at less than cost to the retailer, as defined in the Unfair Sales Act, with the wrongful intent and purpose of inducing the purchase of other merchandise or arbitrarily diverting trade from members of the plaintiff Association, competitors of the defendant, and otherwise injuring members of the plaintiff Association, with the wilful malicious and unlawful intent and purpose of impairing and preventing fair competition, injuring members of the plaintiff Association, and injuring the public welfare,—as to specific dates,—places of locations,—the specific dates running from September 15, 1954 to October 22, 1954, and occurring in the cities of Oklahoma City, Enid, Norman, Tulsa and Shawnee.

The defendant, Safeway, for its answer, admits its corporate existence, as well as the corporate existence of the plaintiff, and for further answer denies the advertising, offering to sell, or sale of two certain items, but it admits

that it did, as alleged by the plaintiff, advertise, offer for sale and sell, all of the other items set forth in Exhibit "B" to plaintiff's Petition upon the dates and at the places and for the prices set forth in the plaintiff's exhibit and made a part of this Petition.

The defendant, Safeway, denies that such was in violation of the Unfair Sales Act, but that the same was made in good faith to meet the price of a competitor, or competitors, who were, on those dates, selling the same articles or products of comparable quality at such prices.

The defendant, for further answer, denied that it sold any of said articles at a reduced price with an unlawful intent or purpose.

The defendant, Safeway, for further answer, alleges that Louie J. Speed, doing business as Speed's Food Market, and others, were, on the same dates as set forth in the plaintiff's Petition, as competitors of the defendant Safeway, offering for sale and selling like merchandise at the prices set forth in their Cross-Petition, and on the dates of such sales certain Association members were giving to their customers trading stamps or coupons, redeemable cash register receipts and other evidences of credit, without making or collecting any additional charge therefor, and that such had a cost value of not less than 2.8 per cent of the sellers' price, and that on Wednesday and Friday such evidence of credit had a cost value of not less than 5.8 per cent, and that the Safeway, defendant, had adjusted its prices on articles alleged to have been offered and sold to meet such competition.

And also, Safeway alleges that in certain other towns, other than in Oklahoma City, that it adjusted its prices to meet competition of other grocers in those communities.

Further answering, the defendant, Safeway, states that if it was not justified in meeting competition in this manner that then the giving of such evidences of credit without additional charge had the effect of offering for sale and selling at less than the minimum mark-up, and was in violation of the Unfair Sales Act.

The defendant Safeway, Cross-Petitions against Louie J. Speed, doing business as Speed's Food Market, and twelve other members of plaintiff Association, alleging that those named parties, in the giving of trading stamps and other evidences of credit, caused and,—caused to be advertised for sale, and did sell, certain merchandise at less than the statutory mark-up and in violation of the provisions of the Unfair Sales Act, and the defendant Safeway, likewise prays for a permanent injunction.

For the purpose of this trial, it was agreed,—it was Ordered by the Court, that the issues as between plaintiff Association and Safeway, and as between Safeway and Speed, be tried together.

The Cross-Defendant, Speed, for answer to the Cross-Petition of Safeway, denies that he has violated any provisions of the Unfair Sales Act, and alleges that he had been, for a number of years, following the practice of allowing his customers a uniform store-wide discount for cash, either at the time of purchase or not less than the

15th of the following month, which had been accomplished by the issuance of S & H Green,—S & H Trading Stamps, furnished to him by the Sperry & Hutchinson Company, and which were redeemable, by the S & H Company, which discount was approximately 2.5 per cent.

First of all, I think that briefly states the issues set up by the pleadings,—first of all, there is no doubt of the right of the plaintiff to maintain this action. Section 598.10 specifically grants this authority. It appears from the pleadings and the evidence that members of the Association consist of approximately 1,700 independent merchants throughout the state, with more than 200 in the Oklahoma City area.

Now it is necessary that the Court consider the Unfair Sales Act, which Act has been declared to be constitutional by our Supreme Court. Now Section 598.2 is the definition section of the statute,—Section 598.3 prohibits sales below cost. That section reads: "It is hereby declared that any advertising, offer to sell, or sale of any merchandise, either by retailers or wholesalers, at less than cost as defined in this Act with the intent and purpose of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or otherwise injuring a competitor, impair and prevent fair competition, injure public welfare, are unfair competition and contrary to public policy and the policy of this Act, where the result of such advertising, offer or sale is to tend to deceive any purchaser or prospective purchaser, or to substantially lessen competition, or to unreasonably restrain trade, or to create a monopoly in any line of commerce".

Section 598.4 is a penal section of the statute, providing that any violation is a misdemeanor, and fixing punishment.

Section 598.5 provides injunctive relief that may be had through the courts; section 598.6 sets out the exempted sales.

Section 598.7 has to do with meeting competitors' prices,—"Any retailer or wholesaler may advertise, offer to sell, or sell merchandise at a price made in good faith to meet the price of a competitor who is selling the same article or products of comparable quality or cost to him as a wholesaler or retailer".

Section 598.8 is determination of cost of sale outside ordinary channels of trade.

Section 598.9 provides for witnesses,—production of books, records, and so forth.

Section 598.10,—I have talked about that,—Trade Associations. Any individual, or a trade association, may bring an action in court.

As I see it, what is before the Court at this time is,—first,—did the defendant, Safeway Company, sell below the statutory price as determined and fixed by the Unfair Sales Act? Second,—if so, was it justified under the terms of the Act? Third,—or was it done with intent to innure competitors and lessen competition? Fourth,—the defendant, Safeway, admits the sale of various articles for the prices set forth in the exhibits attached to plaintiff's Petition, but that they reduced such prices only to meet the

competition of those,—of the plaintiffs who were giving trading stamps here in the Oklahoma City area, and in Enid, Shawnee, and other places, because other retailers had reduced prices.

In reply, the plaintiff and Cross-Defendant, Louie J. Speed admits that he gave trading stamps on the basis of one stamp for each ten cent purchase and as inducement for cash payment or payment not later than the 10th of each month, but that the sale price of the article was not below the statutory mark-up described in the statutes.

Six,—if the giving of the trading stamps is a violation of the statute, that is, if it had the effect of reducing the price below the statutory mark-up permitted by statute, then the Cross-Petitioner violated the law and should be enjoined.

Seven,—if the giving of the trading stamps is illegal and in violation of the Unfair Sales Act, was the defendant, Safeway Company, justified in reducing its price so as to meet such prices?

Eight,—if the giving of trading stamps was not a violation of the statute, that then the defendant, Safeway Stores, violated the law and should be enjoined.

Now as I further understand it, a violation of the Unfair Sales Act arises where a retailer, first, sells below his cost, as that term is defined in the Act; second, without legal justification; third, with the intent condemned by the Act. If there was a sale below cost,—if so,—then there would be a violation of the statute, and it should be stopped.

A retailer may sell below his cost without violating this Act, to meet the lawful price of his competitor, but cannot sell below his cost on this excuse when the price of a competitor is an unlawful price,—that is, one violation of the law will not justify another,—which raises the next question, of whether or not there was a legal justification.

The justification sought is that the thirteen members of plaintiff Association were giving trading stamps, that is, thirteen out of some,—well, many others.

It is admitted that only a small minority of plaintiff members give trading stamps or other evidences of like character, and the facts are that these who give the stamps or other evidences of credit, give them on a general store-wide basis, that is, they may have certain so-called traffic items on which the mark-up is very close to the specified minimum, while most of the other merchandise has a greater mark-up.

And further, the defendant, Safeway, admits that the items complained of were advertised, offered for sale and sold for less than statutory mark-up.

Safeway is in a peculiar position in this case, alleging on one hand that it reduced its prices to meet lawful competition, while on the other hand it is alleged that the giving and distribution of trading stamps reduced the price, and were illegal,—that they reduced the price below the statutory minimum.

The defendant, Safeway, contends that in the cities of Norman, Shawnee, Enid and Tulsa, on the date set out in

the Plaintiff's Petition, it reduced the prices on the various items complained of to meet competition, contending that it could only presume that the prices it was meeting were legal prices. I don't think that is a logical presumption, gentlemen, for here we have one of the largest chains of grocery stores, who undoubtedly, because of their size, can buy as cheap or cheaper than anyone else.

The statute on meeting competitors prices reads,—I will read it again,—quote, "Any retailer or wholesaler may advertise, offer to sell, or sell merchandise at a price made in good faith to meet the price of a competitor who is selling the same article or products of comparable quality at cost to him as a wholesaler or retailer".

As I understand the Act, that if,—Store "B" out here has been able to make a good deal,—a bona fide deal,—then Store "C" would be permitted to meet that competition,—that is the way I understand the situation.

The logical presumption, gentlemen, seems to me would be that the defendant, Safeway, should know that something was wrong with the compeitor's price. As I say, they can probably buy as cheap, or cheaper, than anyone else, and should know that there was something wrong.

Safeway's remedy in that case would be redress through the courts; that is why we have the Unfair Sales Act,—that is what the courts are here for,—and that is what has been done since the inception of this action. I granted the restraining orders as against the Cross-Defendants, and indicated that I would grant them against any of the plaintiff's members, on a Motion or Application of the

Safeway, and in the ones in which the Court has acted,—taken action,—every one of them,—the Court has been dilligent in providing relief and issuing the injunctions.

The Court knows this, as a matter of personal knowledge, that separate actions have been filed in my own home District,—in Enid,—Alva,—Watonga,—restraining other retailers from violating the provisions of the Unfair Sales Act at the instance and behest of the,—upon the Petition of the Safeway Company,—and as I say, in that particular case counter-restraining orders have been issued.

Gentlemen, to attempt to handle these problems in any other manner couldn't have any other effect than to bring chaos. First, Safeway sets a price,—Blakemore, in my District, reduces it; Safeway says they are going to meet it,—the Red Bud then reduces their price,—and there we go,—you would have nothing but chaos, gentlemen,—one violation just brings about another. I say to handle it in any other manner except in the orderly manner as provided by the statute will only bring chaos in the grocery business and have the net results of ruining hundreds, if not thousands, of small independent merchants, and that is the only logical conclusion the Court can come to there.

Now we have this proposition,—the Statute, Section 'c' of 598.5 reads, "Evidence of advertisement, offering to sell, or sale of merchandise by any retailer or wholesaler at less than cost to him, shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition". As I understand the rule of law, that is prima facie evidence, and that, that evidence can then be

rebutted by the person charged, that he was not doing that,—to start out with that the prima facie evidence that the defendant, Safeway, was doing that with the purpose of injuring competitors or destroying or substantially lessening competition.

Now Mr. Christensen was on the stand, and stated that it was not their intention to injure competitors,—it was merely to be competitive, and that another reason was to secure a court decision. That, to my mind, gentlemen, is not proper; that is not the way to transact business,—not the way to treat the courts. They had a remedy of coming in and asking for a restraining order and trying it out, and not violating the law, but he goes on and says that they had no intent to hurt anybody; they didn't prosecute,—they didn't seek an injunction,—they just cut prices.

Now you gentlemen all know,—most of you have had as much experience as the Court has had, and some of you a lot more,—it is awfully hard to establish intent,— what a person has in their mind, what they intend to do,—in fact, intent is a state of mind. I don't know how you can prove it by direct evidence. Very seldom you can prove intent, unless the party admits it, except from circumstances,—what went on. Mr. Christensen said,—he made this statement on cross examination,—that it was the policy of their Company to cut prices regardless of illegality. It isn't right for a large Company like this, to do this, and at the same time Mr. Christensen also stated that he had never read the Unfair Sales Act,—hadn't read it to date,—last Monday or Tuesday. You can only arrive at

intent by,—largely by circumstances, as I have stated,—it is one way one time and another way another time.

And now we get to the question of trading stamps; does the giving of trading stamps, redeemable in merchandise, constitute a violation of the Unfair Sales Act when stamps are given with commodities sold at the minimum price permitted under the Act? Section 598.2, one of the definitions,—"When used in this Act, the term 'cost to the retailer' shall mean the invoice cost of the merchandise to the retailer or the replacement cost of the merchandise to the retailer, whichever is the lowest, less all trade discounts except customary discounts for cash."

I think this can be answered by a consideration of the nature of the purpose of the trading stamp coupons, whether they are to be regarded as a discount for cash or a means of advertising or to intice customers or to retain your trade, or do they simply represent a cut in the sale price of the articles with which they are given. There is no doubt that if it is the latter, they would accomplish a cut in price, and the sale of such merchandise sold at the minimum allowed under the Act and the giving of stamps would amount to a sale below the minimum.

Now on the other hand, if the stamps are given in the nature of an inducement to attract customers to the store, or in the nature of advertising, an advertising device, or as a cash discount for cash,—can they be condemned and found to be in violation of the Unfair Sales Act any more than free parking, musical programs, care of children, and all the other thousand and one promotional schemes

that we have. It is not evidence in this case, but the court can read, and knows what is going on. This week I noticed an advertisement in the Daily Oklahoman where a group of merchants out here were giving everything from gold fish to trips to Havana, Cuba,—it seems to be the practice to give something, and people are looking for it; they are not interested in the cash reduction,—it wouldn't make any difference to them,—they are looking for something like these premiums that are set out in these catalogues,—that is what they are looking for,—it seems to be the custom now. Doctor Johnston says it is bad business,—he may be correct on that,—they may all go broke with these give-away processes that they are in. But he also says that if it pleases the customer, it is good business,—so there we are again. Personally, I don't think it is very good business, but that is their troubles. I don't think it is a prerogative of this Court to try to tell any merchant what is good or bad business,—the way he runs it,—as long as it is not a violation of the statute.

So if these other things I have just mentioned are not condemned, or cannot be condemned,—merely promotional schemes for advertising, I don't believe that the giving of the stamps with cash payment or for cash to be paid in a certain length of time would be a violation. They are in the nature more for prompt payment, it would seem to me to be. These stamps have been in use for a long time, I think some evidence has been introduced that they have been in use in Oklahoma for some forty-five years,—Mr. McCarty said he had been here twenty-two years, in charge of it, working with it. An examination of the contract

here with Speed reveals that they are a cash discount; as I understand it, a means of providing a cash discount. Cash is not given, the stamps are given on the basis of one stamp for each ten cent purchase, and when you have a book, when you have made $120.00 in purchases you have accumulated a book of stamps that will account for about $3.00 on some premium that the good housewife, and not unfrequently I expect the husband, gets something that they otherwise would not have gotten.

Cash discounts have been in vogue for a long time. Purchasers are given the benefit of the traditional cash discount, and the merchant has the reciprocal advantage of trade,—getting his money. Now if he doesn't get his money by a certain time he doesn't give the discount, doesn't give the stamps,—it is not a price adjustment, it is just a mode of financing. It is not a trade discount, nor a rebate, nor a concession. There is no suggestion in the Unfair Sales Act of desire to outlaw the true cash discount; in fact it excludes cash discounts as distinguished with trade discounts.

I would like to state further, on this contract that Speed has with the S & H Company, it specifically provides that they will cancel the contract at any time the stamps are issued in any other manner than which is set forth in the contract, and that is, one for each ten cent purchase.

We have had evidence here by Doctor Johnston,—he says he doesn't think it is good business; it may, or may not be, but he also says if it pleases the customer it is good business,—that seems to be what the people want, and it is not in violation of the provisions of the Unfair

Sales Act,—doesn't reduce the prices. You see, here is what we have, gentlemen,—Speed advertises some merchandise for, say $1.00; the defendant, Safeway, advertises it for, lets say, 97¢, or 98¢, and stands on the theory that they are meeting the green stamp competition. That appears in the public press,—in the newspapers; it appears on the shelf. The only thing that the purchaser sees is that the article is priced at 98¢; he doesn't give any further thought to the trading stamp,—he just sees that the other man has it two cents cheaper.

So you can see how the reduction of price,—what effect it has on the human eye, or the human mind. We go too far on competition. Sometimes I am afraid it is hard to distinguish where competition stops and greed and avarice take over. We know the terrible competition that is going on now in this country in the automobile industry. It looks as though there won't be but three of them left. If two of them have their way, there will only be two of them, and if one of them has its way, there will only be one,—so I say, it is hard to tell, sometimes, where competition stops and greed and avarice take over. That is the purpose of the Unfair Sales Act. We have had it,—it has been in vogue in this country,—it has been going for the last fifty or more years, to provide fair competition and protect the public, because too often,—and it has been shown many times in the history of this nation,—that when it is 'all out', the picture changes, and the public pays.

The Court therefore finds that on the dates alleged in plaintiff's Petition, the defendant, Safeway, did advertise and offer for sale, and did sell the items of merchandise

set forth and at a price below the minimum prices as fixed by the Oklahoma Unfair Sales Act.

The Court further finds that on the dates alleged in plaintiff's Petition, the defendant, Safeway, without legal justification, wilfully and intentionally reduced its prices in an effort to increase its volume, to the detriment of other grocers.

The Court further finds that the Cross-Defendant, Louie J. Speed, did not, on the dates alleged, advertise, offer for sale or sell the merchandise alleged at a price lower than that described and permitted by the Unfair Sales Act.

The Court further finds that the giving of trading stamps, in accordance with the conditions of the trading stamp contract, is in the nature of a cash discount, and is not in violation of the Unfair Sales Act.

And the Court concludes that the injunction be made permanent against the defendant, Safeway Company.

We have had, heretofore, some complaint about double stamps. I think that part of the restraining order should also be continued and made permanent, to avoid any further trouble on that issue, either whether they are cash-saver coupons, or what they are. I am afraid somebody will get off the reservation and misunderstand what the Court has in mind. We will continue that part and make it permanent as to Speed.

Now the other defendants,—or the other Cross-Defendants, this being the date,—those cases were continued until the 17th,—that part of the restraining order should be continued in full force and effect until further hearing.

APPENDIX B

SALES BELOW COST

Unfair Sales Act

OKLAHOMA STATUTES, 1951, TITLE 15, CHAPTER 14, SECTIONS 598.1-598.11

Short Title

Section 598.1. This Act[2] shall be known and designated, and may be cited as the "Unfair Sales Act."

Definitions

Sec. 598.2. (a) When used in this Act,[2] the term "cost to the retailer" shall mean the invoice cost of the merchandise to the retailer or the replacement cost of the merchandise to the retailer, whichever is the lower; less all trade discounts except customary discounts for cash; to which shall be added (1) freight charges not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth, and (2) cartage to the retail outlet if done or paid for by the retailer, which cartage cost, in the absence of proof of a lesser cost, shall be deemed to be three-fourths (¾) of one per cent (1%) of the cost to the retailer as herein defined after adding thereto freight charges but before adding thereto cartage, and taxes, (3) all State and Federal taxes not heretofore added to the cost as such, and (4) a markup to cover a proportionate part of the cost of doing business, which markup, in the absence of proof of a lesser cost, shall be six (6%) per cent of the cost of [to] the retailer as herein set forth after adding thereto freight charges and cartage but before adding thereto a markup.

(b) When used in this Act, the term "cost to the wholesaler" shall mean the invoice cost of the merchandise to the wholesaler, or the replacement cost of the merchandise to the wholesaler, whichever is the lower; less all trade discounts except customary discounts for cash; to which shall be added, (1) freight charges, not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth, and (2) cartage to the retail outlet if done or paid for by the wholesaler, which cartage cost, in the absence of proof of a lesser cost, shall be deemed to be three-fourths (¾) of one per cent (1%) of the cost to the wholesaler as herein set forth after adding thereto freight charges but before adding thereto cartage, and taxes, and (3) all State and Federal taxes not heretofore added to the cost as such.

(c) When used in this Act the term "replacement costs" shall mean the cost per unit at which the merchandise sold or offered for sale could have been bought by the seller at any time within thirty (30) days prior to the date of sale or the date upon which it is offered for sale by the seller if bought in the same quantity or quantities as the seller's last purchase of said merchandise.

(d) When one or more items are advertised, offered for sale, or sold with one or more other items at a combined price, or are advertised, offered as a gift, or given with the sale of one or more other items, each and all of said items shall for the purposes of this Act be deemed to be advertised, offered for sale, or sold, and the price of each item named shall be governed by the provisions of paragraphs (a) or (b) of Section 2, respectively.

(e) The terms "sell at retail," "sales at retail," and "retail sale" shall mean and include any transfer for a valuable consideration made in the ordinary course of trade or in the usual prosecution of the seller's business of title to tangible personal property to the purchaser for consumption or use other than resale or further processing or manufacturing. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price.

(f) The terms "sell at wholesale," "sales at wholesale," and "wholesale sales" shall mean and include any transfer for a valuable consideration made in the ordinary course of trade or the usual conduct of the seller's business, of title to tangible personal property to the purchaser for purposes of resale or further processing or manufacturing. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price.

(g) The term "retailer" shall mean and include every person, partnership, corporation or association engaged in the business of making sales at retail within this State; provided that, in the case of a person, partnership, corporation or association engaged in the business of making both sales at retail and sales at wholesale, such term shall be applied only to the retail portion of such business.

(h) The term "wholesaler" shall mean and include every person, partnership, corporation, or association engaged in the business of making sales at wholesale within this State; provided that, in the case of a person, partnership, corpora-

tion or association engaged in the business of making both sales at wholesale and sales at retail, such term shall be applied only to the wholesale portion of such business.

Sales Below Cost Prohibited in Certain Cases

Sec. 598.3. It is hereby declared that any advertising, offer to sell, or sale of any merchandise, either by retailers or wholesalers, at less than cost as defined in this Act with the intent and purpose of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or otherwise injuring a competitor, impair and prevent fair competition, injure public welfare are unfair competition and contrary to public policy and the policy of this Act, where the result of such advertising, offer or sale is to tend to deceive any purchaser or prospective purchaser, or to substantially lessen competition, or to unreasonably restrain trade, or to tend to create a monopoly in any line of commerce.

Punishment for Sales Below Cost

Sec. 598.4. Any retailer who shall, in contravention of the policy of this Act, advertise, offer to sell or sell at retail any item of merchandise at less than cost to the retailer as defined in this Act; or any wholesaler who shall in contravention of the policy of this Act, advertise, offer to sell, or sell at wholesale any item of merchandise at less than cost to the wholesaler as defined in this Act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than Five Hundred Dollars ($500.00).

Injunctive Relief—Damages—Prima Facie Evidence

Sec. 598.5. (a) In addition to the penalties provided in this Act, any person injured by any violation, or who shall suffer injury from any threatened violation of this Act, may maintain an action in any court of equitable jurisdiction to prevent, restrain or enjoin such violation or threatened violation. If in such action a violation or threatened violation of this Act shall be established, the court shall enjoin and restrain or otherwise prohibit, such violation or threatened violation and, in addition thereto, shall assess in favor of the plaintiff and against the defendant the costs of suit. In such action if damages are alleged and proved, the plaintiff in said action, in addition to such injunctive relief and costs of suit, shall be entitled to recover from the defendant the actual damages sustained by him.

(b) In the event no injunctive relief is sought or required, any person injured by a violation of this Act may maintain an action for damages alone in any court of general jurisdiction, and the measure of damages in such action shall be the same as prescribed in subsection (a) of this Section. Provided this Act shall not authorize suits or actions against newspapers, radio broadcasters, or other advertising agencies through which such advertisements are published, broadcast or otherwise made.

(c) Evidence of advertisement, offering to sell, or sale of merchandise by any retailer or wholesaler at less than cost to him, shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

Exempted Sales

Sec. 598.6. The provisions of this Act, shall not apply to sales at retail or sales at wholesale.

(a) where seasonable merchandise is sold in bona fide clearance sales, if advertised, marked, and sold as such;

(b) where perishable merchandise must be sold promptly in order to forestall loss;

(c) where merchandise is imperfect or damaged or is being discontinued and is advertised, marked and sold as such;

(d) where merchandise is sold upon the final liquidation of any business;

(e) where merchandise is sold for charitable purposes or to relief agencies;

(f) where merchandise is sold on contract to departments of the government or governmental institutions;

(g) where merchandise is sold by any officer acting under the order or direction of any court;

(h) where merchandise is sold at any bona fide auction sale.

Meeting Competitor's Prices

Sec. 598.7. Any retailer or wholesaler may advertise, offer to sell, or sell merchandise at a price made in good faith to meet the price of a competitor who is selling the same article or products of comparable quality at cost to him as a wholesaler or retailer. The price of merchandise advertised, offered for sale or sold under the exemptions

specified in Section 6, shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor within the purview of the first sentence of this Section.

Determination of Cost in Case of Sale Outside Ordinary Channels of Trade

Sec. 598.8. In establishing the cost of merchandise to the retailer or wholesaler, the invoice cost of such merchandise purchased at a forced, bankrupt, closeout sale, or other sale outside of the ordinary channels of trade, may not be used as a basis for justifying a price lower than one based upon the replacement cost of the merchandise to the retailer or wholesaler, within thirty (30) days prior to the date of sale, in the quantity last purchased through the ordinary channels of trade.

Witnesses—Production of Books, Records, Etc.

Sec. 598.9. Any defendant, or any witnesses, in any civil action brought under the provisions of this Act may be required to testify, and any defendant, or any witness, may, upon proper process, be compelled to produce his books, records, invoices and all other documents of any such defendant or witness into court and the same may be introduced as evidence, but no defendant, or any witness in such civil action shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may thus be required to testify or produce evidence, documentary or otherwise,

and no testimony thus given or produced shall be received against him upon any criminal proceeding or investigation.

Trade Association May Sue

Sec. 598.10. Any duly organized and existing trade association, whether incorporated or not, is hereby authorized to institute and prosecute a suit or suits for injunctive relief and costs, provided for under the terms of this Act, as the real party in interest for and on behalf of one or more of said association's members, when violation of this Act directly or indirectly affects or threatens to affect or injure such member or members, or where violation of this Act threatens to impair fair competition or otherwise affects such member as herein provided.

Partial Invalidity

Sec. 598.11. If any subsection, sentence, clause, word, phrase or provision of this Act shall for any reason be held invalid or unconstitutional, the validity of the remaining parts hereof shall not be affected thereby and to that end the provisions of this Act are declared to be severable.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 252

SAFEWAY STORES, INCORPORATED,
Appellant,

v.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC.
and LOUIE J. SPEED, INC.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

MOTION TO DISMISS

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MOTION TO DISMISS

Appellee moves pursuant to Rule 16, Supreme Court Rules (28 U. S. C.) to dismiss the appeal herein on the grounds that the appeal does not present a substantial federal question and that the judgment rests on an adequate non-federal basis.

This is another skirmish in the now famous Safeway battle for the expanding Southwest market that has erupted in numerous indictments, complaints, injunctions and sentences.*

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* *E.g. United States* v. *Safeway Stores, Inc. et al.*, CCH TRADE REG. REP. (1957 Trade Cas.) Par. 68,770 (N.D. Texas, 1957), in which the court accepted pleas of nolo contendere from all of the defendants in a criminal prosecution which charged a conspiracy to monopolize the retail grocery business in various cities in Texas and New Mexico; and *United States* v. *Safeway Stores, Inc.*, CCH TRADE REG. REP. (1957 Trade Cas.) Par. 68,871 (N.D. Texas 1957) terminated by consent decree, which judgment prohibited Safeway from selling at prices below cost and operating retail stores below the cost of doing business for the purpose of attempting to monopolize retail grocery trade.

The specific market here involved is the rich Tulsa-Oklahoma City area. The remedy sought and obtained by the independent grocers through their Retail Grocers Association, was a permanent injunction against illegal price cutting. The defense claimed by Safeway, and rejected by both the trial court and the Oklahoma Supreme Court, was that the price cutting was done in good faith to meet competition.*

No doubt, the "Detroit Jobber" cases (*Standard Oil Co.* v. *FTC*, 340 U. S. 231 (1951); and *FTC* v. *Standard Oil Co.*, 355 U. S. 396 (1958)), have done much to revive interest in the defense of the good faith meeting of competition when the charge is that of discriminatory pricing under Robinson-Patman (15 U. S. C. §§13, 13a, 13b, 21a (1952)). Probably the criteria there defined are also relevant in an action based on a local unfair sales act.**

However, Safeway's reliance on the good faith defense is particularly inappropriate here in the light of the explicit finding by the Oklahoma Supreme Court that:

> "* * * Safeway obviously and admittedly did not, in good faith, set the price of its articles which were subject to the Unfair Sales Act on the basis of its competitors' prices which it in good faith believed to be legal prices under the Unfair Sales Act, but on the contrary it set illegal prices for the sole purpose of meeting prices of its competitors, which it thought to be illegal" (Appendix A, pp. 26-27).

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* The opinion of the Supreme Court of Oklahoma, reported at 322 P. 2d 179 (Okla. 1957), and the opinion of the District Court of Oklahoma County reported in CCH TRADE REG. REP. (1955 Trade Cas.) Par. 68,195, are printed in full as Appendix A to appellant's Jurisdictional Statement. The Oklahoma Unfair Sales Act, 15 Okla. Stat. 1951 §§598.1-598.11, is printed in full as Appendix B to appellant's Jurisdictional Statement. Hereinafter, references to these opinions and the statute will, for the Court's convenience, be cited as Appendix A (or B), p.

** Actually the Oklahoma Unfair Sales Act is more explicit than the Robinson-Patman Act in limiting competition to lawful prices. Section 598.7 provides: "Any retailer or wholesaler may advertise, offer to sell, or sell merchandise at a price made in good faith to meet the price of a competitor who is selling the same article or products of comparable quality at cost to him as a wholesaler or retailer." (Appendix B, p. 68)

In the same vein as the Oklahoma Supreme Court, the trial court had rejected Safeway's claim of good faith with the following comment on the testimony of Safeway's chief administrative officer in the Oklahoma division, Mr. Christensen:

> "Mr. Christensen said,—he made this statement on cross examination,—that it was the policy of their company to cut prices regardless of illegality. It isn't right for a large Company like this, to do this, and at the same time Mr. Christensen also stated that he had never read the Unfair Sales Act,—hadn't read it to date,—last Monday or Tuesday." (Appendix A, *supra*, p. 56).

In its formal findings the trial court held:

> "3. That, on the dates set forth in plaintiff's petition, in Tulsa, Enid, Shawnee, and Norman, when defendant, Safeway Stores, Inc., a foreign corporation, and the agents, servants, clerks, and employees of said defendant, and all persons acting by or under the authority of said defendant, reduced its prices below cost to the retailer as aforesaid, allegedly to meet in good faith the prices of competitors who were on those dates selling the same articles or products of comparable quality at such prices, such advertising for sale, offering for sale, and selling by the defendant, Safeway Stores, Inc., at said reduced prices was not in good faith to meet the prices of competitors selling the articles at cost to them as defined by the Oklahoma 'Unfair Sales Act' but was the meeting of prices which the defendant, Safeway Stores, Inc., either knew or had reason to know were illegal prices and was therefore without legal justification.
>
> "4. That, on the dates set forth in plaintiff's petition, in Oklahoma City, Midwest City, Tulsa, Enid, Shawnee, and Norman, defendant, Safeway Stores, Inc., a foreign corporation, and the agents, servants, clerks, and employees of said defendant, and all persons acting by or under the authority of said defendant, did advertise for sale, offer for sale, and sell the specified items of merchandise at less than cost to the retailer as defined by the Oklahoma

> 'Unfair Sales Act' with the intent and purpose of unfairly diverting trade from its competitors, which acts constituted unfair competition, were contrary to public policy, and were in violation of the Oklahoma 'Unfair Sales Act'." (Appendix A, *supra*, p. 43).

This motion to dismiss, then, is grounded in the first instance on explicit findings of fact by the trial court, explicitly authenticated by the Oklahoma Supreme Court that Safeway's price cutting was not in good faith—findings of fact not lightly to be disturbed by this Court. *Pennekamp* v. *Florida*, 328 U. S. 331, 345; *Drivers Union* v. *Meadowmoor Co.*, 312 U. S. 287, 293, 294 (1940).

Moreover, Safeway misconceives the scope of the good faith defense. The "core of the defense", as this Court has stated, "consists of the provision that whenever a lawful lower price of a competitor threatens to deprive a seller of a customer, the seller, to retain the customer, may in good faith meet that lower price." *Standard Oil Co.* v. *FTC*, *supra*, 340 U. S. at 242. The emphasis there was on lawful prices, as it has been ever since, if not even before, this Court's opinion in *FTC* v. *Staley Manufacturing Co.*, 324 U. S. 746. Finally, the entire rationale of the majority opinion in the second *Standard Oil* decision rests on the statement that there was "no showing or serious contention by the Commission" that the offers which Standard met were themselves unlawful. (355 U. S. at 399 n. 4). As the dissenting opinion emphasizes:

> "We said in *Standard Oil Co.* v. *Federal Trade Comm'n*, 340 U. S. 231, 250, 'Congress meant to permit the natural consequences to follow the seller's action in meeting in good faith a *lawful* and *equally low price* of its competitor.' (Italics added.) It is only a *lawful* lower price that may be met. Were it otherwise then the law to govern is not the Robinson-Patman Act but the law of the jungle" (*Id.* at 408).

Matched against these criteria—criteria equally indispensable to enforcement of the Robinson-Patman Act and

the Oklahoma Unfair Sales Act—Safeway's systematic price cutting to meet all prices and even beat some, regardless of illegality, finds no protection within the good faith defense; and as a consequence, destroys Safeway's standing to mount any attack against the constitutionality of the Oklahoma Unfair Sales Act.

Safeway cannot shelter even under the extension to the good faith defense urged by the Attorney General's Report, to wit, that the unlawfulness of the equally low price met should not bar the defense unless the illegality of the competitor's price was known, or ought to have been known, by the price discriminator. REPORT OF THE ATTORNEY GENERAL'S NATIONAL COMMITTEE TO STUDY THE ANTITRUST LAWS 181-2 (1955). The trial court and the Oklahoma Supreme Court both found that Safeway knew, or should have known, that the prices it met in Enid, Tulsa, Shawnee and Norman were illegal prices, as were the prices Safeway set to beat its competition in Oklahoma City (Appendix A, *supra,* p. 43 and pp. 26-27 respectively).

Taken, then, in the frame of reference of the "Detroit Jobber" cases, the *Staley* decision and the broad construction suggested by the Attorney General's Report, *supra,* it is quite clear as found by both the trial court and the Supreme Court of Oklahoma that Safeway's price cuts were part of a pricing scheme, admittedly ordered by Mr. Christensen, "to cut prices regardless of illegality", which system was not made in good faith to meet competition, but was for the purpose of diverting trade and injuring competition.

(1) Not being in good faith, the defense fails.

(2) The prices met in Enid, Tulsa, Shawnee and Norman being illegal and known to Safeway to be illegal, the defense fails.

(3) The prices set by Safeway in Oklahoma City being lower than competition and illegal as well, the defense fails.

(4) And, finally, not having been made to meet competition, but actually pursuant to a pricing system designed to divert, not hold, trade, the defense fails.

Safeway, the "hardened antitrust violator",* was not deprived of the good faith defense. Rather, it never qualified for it. To say in the face of these findings of fact by the trial court and the Oklahoma Supreme Court that Safeway was denied due process and the equal protection of the laws is to assert the novel proposition that every litigant who fails to sustain the burden of proving his bona fides thereby creates a federal question entitling him to Supreme Court review.

What Safeway apparently fails to appreciate is that having been found wanting on the crucial issue of its good faith, it now has no standing to raise issues concerning the constitutionality of the Oklahoma Unfair Sales Act.

Failing to justify its own price cutting under the Act, Safeway endeavors to reach the same objective through a collateral attack on the constitutionality of the Act itself. Its object in either case is to strip the independent grocers of their main bulwark against the repetition of such predatory practices. It is Safeway's argument that, accepting, *arguendo,* the justice of the injunction against it for illegal price cutting, the giving of trading stamps on minimum priced groceries ought also be enjoined; that the state courts' failure to grant Safeway's cross petition so to enjoin constitutes a denial of due process or of equal protection of the laws.

This left handed attempt to raise federal issues of due process and equal protection via trading stamps comes

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* "The [Justice] Department, moreover, was aware that Safeway was a hardened antitrust violator, having pleaded nolo contendere in 5 of the 6 times it faced criminal indictments. Such a distressing record would indicate that routine Government antitrust action would have but slight deterrent effect upon the mischievous management of this corporation." Senate Committee on Small Business, *The Role of Private Antitrust Enforcement in Protecting Small Business,* S. Rep. No. 1855, 85th Cong. 2d Sess. 6 (1958).

rather late. There is no question that state minimum pricing statutes are constitutionally permissible.

> "[T]here can be no doubt that upon proper occasion and by appropriate measures the state may regulate a business in any of its aspects, including the prices to be charged for the products or commodities it sells. * * * Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty." (*Nebbia* v. *New York*, 291 U. S. 502, 537, 539 (1935)).

On such reasoning the constitutionality of the instant act was upheld by the Oklahoma Supreme Court. *Adwon* v. *Oklahoma Retail Grocers Association, Inc.*, 204 Okla. 199, 228 P. 2d 376 (1951).*

Similarly, the decision of the Oklahoma Supreme Court that trading stamps are a discount for the prompt payment of cash and that a bona fide cash discount not exceeding 3% is not a price cut within the purview of the act is a decision neither unreasonable nor novel. Supreme courts of other states have come to the identical conclusion time and again in determining the impact of trading stamps on minimum pricing statutes (e.g. *Bristol-Myers Co.* v. *Lit Bros. Inc.*, 336 Pa. 81, 6 A. 2d 843 (1939); *Food and Grocery Bureau, Inc.* v. *Garfield*, 20 Cal. 2d 228, 125 P. 2d 3 (1942); *Trade Commission* v. *Bush*, 123 Utah 302, 259 P. 2d 304 (1953); *Sperry and Hutchinson* v. *Margetts*, 15 N. J. 203, 104 A. 2d 310 (1954); *Gever* v. *American Stores Co.*, 387 Pa. 206, 127 A. 2d 694 (1956). *See also, Weco Products Co.* v. *Mid-City Cut Rate Drug Stores*, 55 Cal. App. 2d 684, 131 P. 2d 856 (1942)).

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* Unfair sales acts, similar to, if not identical with, the Oklahoma Unfair Sales Act, are in force in more than twenty-five other states (see chart, 2 CCH TRADE REG. REP., State Laws 7503). Their constitutionality is well documented by decisions of the respective state supreme courts (*e.g. People* v. *Payless Drug Store*, 25 Cal. 2d 108, 153 P. 2d 9 (1944); *State* v. *Langley*, 53 Wyo. 332, 84 P. 2d 767 (1938); *State* v. *Ross*, 259 Wis. 379; 48 N.W. 2d 460 (1951); *State* v. *Sears*, 4 Wash. 2d 200, 103 P. 2d 337 (1940); *Associated Merchants* v. *Ormesher*, 107 Mont. 530, 86 P. 2d 1031 (1939).

At this stage in the decisional stream, the issues tendered by Safeway require no resort to federal constitutional law, being well within states' rights precedents already unequivocably established. As here decided by the Supreme Court of Oklahoma, this local issue rests on an adequate non-federal basis; and, as such, raises no substantial federal question deserving of this Court's review. *Rice* v. *Sioux City Cemetery*, 349 U. S. 70, 74 (1954); and *Ashwander* v. *Valley Authority*, 297 U. S. 288, 347 (1935).

WHEREFORE, the appellee respectfully moves that this appeal be in all respects dismissed.

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In the

Supreme Court of the United States

OCTOBER TERM, 1958

No. 252

SAFEWAY STORES, INCORPORATED,
Appellant,

v.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., and LOUIE J. SPEED, INC.,
Appellees.

On Appeal from the Supreme Court of the State of Oklahoma

BRIEF OPPOSING MOTION TO DISMISS

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BRIEF OPPOSING MOTION TO DISMISS

Appellees have moved to dismiss this appeal as not involving a substantial federal question and as resting on an adequate non-federal basis. This brief is in reply to the arguments advanced in that motion.

QUESTION ONE

Appellant has asserted that the judgment below denies it the right to meet prices that its competitors are free to set

in contravention of the Due Process and Equal Protection clauses of the Fourteenth Amendment.

This proscription arises from the injunction which prohibits appellant from selling below cost in violation of the Oklahoma Unfair Sales Act "* * * except to meet in good faith the prices of competitors who are selling * * * at cost to them as retailers * * *," Jurisdictional Statement, Appendix A, p. 44.

Appellant's competitors are selling groceries every day throughout Oklahoma at prices below their costs, but not in violation of the Act. Appellant cannot meet these lawful prices. It cannot enjoin these lawful prices. The very merchant whose price appellant would meet could hail it into court on contempt charges.

This Act and this injunction are unique in American jurisprudence. No other state statute and certainly no federal statute prohibits one merchant from meeting the price of another who is merely selling below his cost. Many state statutes prohibit the meeting of illegal prices. Perhaps the meeting competition defense is not available under the Federal anti-trust laws where the price being met is unlawful. But there is a vast difference between a price below cost and an unlawful price. Indeed, the area between the two is the area of the most effective price competition in the retail grocery industry.

As a nation we have long had faith in the value of competition. Now the Supreme Court of Oklahoma has said

that it is unlawful for a merchant in Oklahoma to set "* * * prices for the sole purpose of meeting prices of its competitors * * *" selling below their cost even though the competitors' price is lawful. Jurisdictional Statement, Appendix A, p. 27. A price below cost set without regard to competition may be lawful, but if set "* * * for the sole purpose of meeting prices of its competitors * * *" it is *ipso facto* unlawful.

The unlawful purpose and effect, otherwise essential ingredients of an unlawful price, are immaterial where the meeting competition defense is asserted. The only criterion then is whether the price being met is below cost. Meeting competition is in itself an unlawful purpose.

Appellees have cited three cases under this question. They are *F. T. C. v. Staley, 324 U. S. 746, 89 L. Ed. 1338; Standard Oil Co. v. F. T. C., 340 U. S. 231, 95 L. Ed. 239;* and *Standard Oil Co. v. F. T. C., 355 U. S. 396, 2 L. Ed. 2d 359.* They are cited for the proposition that to invoke the meeting competition defense, the price being met must be lawful. The cases involve statutory construction of the Robinson-Patman Act. Appellant's complaint is not that it cannot meet an unlawful price. Appellant is enjoined from meeting a lawful price.

Such an injunction cannot stand. In the second *Standard Oil* case, *supra*, there was "* * * no showing or serious contention by the Commission * * *" that Standard Oil's competitors were making offers to sell at unlawful prices. As a result, Standard Oil was acquitted. But it is irrelevant here that the prices appellant meets are lawful if they are simply below cost.

Appellees state that the trial court found the prices met by appellant were unlawful. While we disagree, it makes no difference. It is the injunction that is being appealed from. Appellant is enjoined from meeting a competitor selling below cost. Even in the record below, there is not a scintilla of evidence as to the legality or illegality of the prices appellant met. The only support for any such finding is the statement of the trial judge that appellant stated

> "* * * it reduced the prices on the various items complained of to meet competition, contending that it could only presume that the prices it was meeting were legal prices. I don't think that is a logical presumption, gentlemen, for here we have one of the largest chain of grocery stores, who undoubtedly, because of their size, can buy as cheap or cheaper than anyone else." Jurisdictional Statement, Appendix A, p. 54.

The life of the retail grocery industry has not been logic: it has been experience. Appellant would happily substitute the trial court's logical presumption for its experience. Under any circumstances, there can be no logical presumption that the merchant whose prices were being met had an unlawful purpose and that his acts had a prohibited effect. At most there may be some notice that the prices being met may be below the competitor's cost. But a price below cost is not an illegal price. Illegality involves an unlawful purpose and a prohibited effect as well.

There is an aspect of this case that transcends in significance the Oklahoma Unfair Sales Act and, indeed, even the rights of these parties. That is the interplay between economic liberty and individual freedom. There is within the framework of our Constitution a protection to economic

liberty more fundamental than the preservation of an individual's property rights. Without developing the point, or relating it to this case, we would call to mind the admonitions of Adam Smith, F. B. W. von Herrmann, John Stuart Mill, Karl Menger, Lujo Brentano, Henry Sidgwick, Alfred Marshall, F. A. Fetter, and F. H. Knight, and of John Locke, David Hume, Jeremy Bentham, Wilhelm von Humboldt, Alexis de Tocqueville, Jacob Burckhardt, Lord Acton, A. E. Dicey, Earnest Barker, and F. A. Hayek. The proposition is stated with considerable restraint by Henry Simons as follows:

> "It seems clear, at all events, that there is an intimate connection between freedom of enterprise and freedom of discussion and that political liberty can survive only within an effectively competitive economic system."

Henry C. Simons, *Economic Policy For A Free Society*, The University of Chicago Press, 1948.

Oklahoma has arbitrarily prohibited competition in its most vital function; freedom to meet a price that a competitor is free to set. Compare this to the case of *Balian Ice Cream Co. v. Arden Farms Co. (U. S. D. C. Calif., 1952), 104 F. Supp. 796, 801, aff'd 231 F. 2d 356, cert. den. 350 U. S. 991, 100 L. Ed. 856*, where the court was concerned with an alleged violation of the Robinson-Patman Act, and said on the question of the meaning of competition and the fundamental right to meet the prices set by competitors:

> "* * * Reputable concerns constantly advertise, 'We will not be knowingly undersold.' And no case exists in which the courts have held that a price reduction, in itself, not having as its purpose the destruction of

a competitor or the monopolization of trade or commerce, but made to meet competition in the field or to retain trade or customers or to gain new customers, is *illegal as such.*

* * * * *

"'The right of a seller to lower his price in good faith to meet the equally low price of a competitor in the sale of goods of like grade and quality, is, *in reality, the right to compete.* For to deny a seller the right to meet his competitor's lower price to his customer is in effect to deny him the right to compete with that competitor. A 1941 Report of the Federal Trade Commission, to a Congressional Committee, is in part:

"'"*The right of self defense against competitive price attacks is as vital in a competitive economy as the right of self defense against personal attack.*" (Emphasis added by Court.)'"

As it should be, "The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought." *Williamson v. Lee Optical Co. of Oklahoma, 348 U. S. 483, 488, 99 L. Ed. 563, 572.*

Any other rule is inconsistent with democracy.

On the other hand, it is the Constitution that safeguards our freedoms and this Court will not uphold a statute which is "* * * arbitrary, discriminatory or demonstrably irrelevant to the policy the Legislature is free to adopt and hence an unnecessary and unwarranted interference with individual liberty." *Nebbia v. New York, 291 U. S. 502, 539, 78 L. Ed. 940, 958.*

QUESTION TWO

Question Two arises because, as was readily noted in the first law review article written on the case below, Oklahoma "* * * virtually forces competitors to use trading stamps." *Competition From Retailers Issuing Trading Stamps Cannot Be Met By Price Reductions Equivalent To Value Of Stamps. 36 Texas Law Review 691, 694.* For some reason, or more accurately for no reason, Oklahoma now restricts discounts for prompt payment of cash given by retailers to the media of trading stamps and other evidences of credit.

The question for this Court is whether there is a difference between trading stamps and other methods of giving discounts for cash which justifies permitting the former and prohibiting the latter. The way in which the question has arisen tends to obscure a clear focus of the problem. The question is identical with the question which would arise if the legislature of the State of Oklahoma had said "Retailers may give trading stamps and other evidences of credit in connection with the sale of goods at retail at statutory cost as a discount for the prompt payment of cash; provided that the discount cannot be given in any other way."

Appellees argue that trading stamps are a discount for prompt payment of cash and not a price cut as indeed the Supreme Court of Oklahoma held. Numerous cases are cited in support of this legal conclusion.

They further argue that cash as the discount, like the customary way of giving the discount by a net price for cash payment, is a price cut. "There is no magic in the words 'cash discount.' When subjected to analysis they are merely a euphemism for what is in reality a price cut." *Colgate-Palmolive Company v. Elm Farm Foods Co., 148 N. E. 2d 861 (Sup. Jud. Ct. Mass. 1958).* What lawyer would argue with Mr. Justice Holmes' legal analysis of the trading stamps as "* * * a draft upon another merchant, payable in goods * * *"? *Commonwealth v. Sisson, 60 N. E. 385 (Mass. 1901).* Of course, in many instances the draft is on the merchant giving it and is sometimes payable in cash.

Is the action of Oklahoma arbitrary, or discriminatory?

Why should the housewives of Oklahoma be denied the right to buy at the lowest net price prescribed by the legislature? Why should they be forced to buy with what they want, a trading stamp? Why should the merchants be driven to use trading stamps? Why should they be denied the right to give the type of discount they choose? Why should the trading stamp companies be granted, as a practical matter, a state monopoly of the cash discount business?

What policy was the legislature attempting to adopt in connection with cash discounts on sales at retail? The answer is clear. None. As the four dissenting Justices below said, "The Act does not authorize discounts for cash in retail sales." Jurisdictional Statement, Appendix A, p. 38. What justification is there then for this discrimination?

QUESTIONS THREE AND FOUR

Appellees have not discussed these questions in their Motion to Dismiss. We will not develop these points further at this preliminary stage.

CONCLUSION

This appeal brings before this Court substantial federal questions both in terms of the far-reaching legal questions involved and in the practical effect on our national economic policy. The questions presented are so substantial as to require plenary consideration with briefs on the merits and oral argument, for their resolution.

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No. 252

In the

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Appellees.

On Appeal from the Supreme Court of the State of Oklahoma

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No. 252

In the

Supreme Court of the United States

OCTOBER TERM, 1958

SAFEWAY STORES, INCORPORATED,

Appellant,

v.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., and LOUIE J. SPEED, INC.,

Appellees.

On Appeal from the Supreme Court of the State of Oklahoma

APPELLANT'S BRIEF ON THE MERITS

OPINIONS BELOW

The majority and the concurring and dissenting opinions of the Supreme Court of the State of Oklahoma (R. 632-647) are reported at 322 P. 2d 179.

JURISDICTION

The opinions of the Supreme Court of Oklahoma were rendered on the 24th day of December, 1957. Appellant's

Motion for Rehearing was denied February 11, 1958. Notice of Appeal to the Supreme Court of the United States was filed with the clerk of the Supreme Court of Oklahoma on May 8, 1958. On July 2, 1958, for good cause shown, the Chief Justice of the Supreme Court of Oklahoma enlarged the time for docketing the case to and including August 4, 1958. The Jurisdictional Statement was filed August 4, 1958. Probable jurisdiction was noted October 13, 1958. The jurisdiction of this Court rests on 28 U. S. C. 1257(2).

THE CONSTITUTIONAL PROVISIONS AND THE STATUTE INVOLVED

The case involves the Fourteenth Amendment, as follows:

> "* * * nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *U. S. Code, Constitution, Vol. I, p. XLV.*

Also involved is Article VI, Clause 2, of the Constitution of the United States, as follows:

> "This Constitution, and the Laws of the United States which shall be made in pursuance thereof * * * shall be the supreme Law of the Land; and the Courts in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." *U. S. Code, Constitution, Vol. I, p. XLIII.*

The Oklahoma Unfair Sales Act (Oklahoma Statutes, 1951, Title 15, Chapter 14, Sections 598.1 through 598.11)

is challenged as violative of the foregoing provisions of the Constitution of the United States.

QUESTIONS PRESENTED

ONE

Does the Oklahoma Unfair Sales Act violate the Due Process and Equal Protection clauses of the Fourteenth Amendment because it arbitrarily prohibits retail grocers from selling at prices set for the sole purpose of meeting prices of competitors selling the same articles at lawful prices and hence constitute an unnecessary and unwarranted interference with individual liberty?

TWO

Does the Oklahoma Unfair Sales Act violate the Due Process and Equal Protection clauses of the Fourteenth Amendment because it prohibits a retail grocer from reducing his price to a price equal to the price charged by a competitor selling the same article less the value of trading stamps given by that competitor with the sale of that article and hence constitute an unnecessary and unwarranted interference with individual liberty?

THREE

Does the Oklahoma Unfair Sales Act violate the Due Process and Equal Protection clauses of the Fourteenth Amendment because it arbitrarily permits the giving of trading stamps, cash register receipts, and other evidences of credit with retail sales at statutory cost, but wholly fails to fix any limit on the value the trading stamps, cash

register receipts, and other evidence of credit may have, prohibits the giving of money, or any other thing of value with retail sales at statutory cost, and as here applied fixes the maximum value that trading stamps, cash register receipts, or other evidences of credit given by appellant may have, while failing to fix the value for competitors of appellant?

FOUR

Are the actions by the Courts of the State of Oklahoma in this cause void because those Courts had no jurisdiction over the subject matter involved in the litigation, since the Congress of the United States had enacted the Sherman Act *(15 U. S. Code 1, et seq. Vol. 2, p. 1608)*, the Clayton Act *(15 U. S. Code 13, et seq., Vol. 2, p. 1611)*, the Federal Trade Commission Act *(15 U. S. Code 41, et seq., Vol. 2, p. 1621)*, and the Robinson-Patman Act *(15 U. S. Code 13a, et seq., Vol. 2, p. 1612)*, which laws made in pursuance of the Constitution of the United States are the supreme law of the land, and the Oklahoma Unfair Sales Act, as here applied, is in irreconcilable conflict with the aforementioned federal statutes and attempts to regulate the same conduct thus depriving appellant of due process and equal protection of the laws?

STATEMENT OF THE CASE

The record here discloses a concise case history in contemporary retail competition. The trial, though brief, covers the events of several years. The Oklahoma Unfair Sales Act, declared void in 1949, because "* * * it punished a sale for less than cost regardless of any wrongful intent,"

was re-enacted in its present form and found valid in 1951. *Adwon v. Oklahoma Retail Grocers Association, 204 Okla. 199, 228 P. 2d 376, 377 (1951).* Because of the statute, two perplexing problems confronted the Oklahoma grocer.

The first problem was unique to the merchant in Oklahoma. It was brought about by the fact that this Act, by its language, permits the meeting of competition only if a competitor's price is at his statutory cost or above.

> "Any retailer or wholesaler may advertise, offer to sell, or sell merchandise at a price made in good faith to meet the price of a competitor who is selling the same article or product of comparable quality at cost to him as a wholesaler or retailer." Sec. 598.7.

All other Unfair Sales Acts permit the meeting of competition without restraint, or at least where the price being met is lawful. The question in Oklahoma was, when can the price of a competitor be met?

The second problem confronting the merchant was the re-entry into Oklahoma of trading stamps in 1952 and the legal effect of giving trading stamps with sales made at or near statutory cost.

This case has provided the resolution of these problems.

In the summary of the evidence which follows, the language used is taken from the record where practical, though not always quoted.

At the time suit was commenced in 1954, the total average weekly sales of food products in Oklahoma exceeded eight million dollars. Of this total, appellant sold approximately 17½%, from 85 different retail locations. Members of appellee Association sold over 30% of the total (R. 479).

For several years after re-enactment of the Unfair Sales Act, the parties to this suit cooperated, to some extent, in policing it (R. 111). When a member of the Association in competition with appellant was found to be price cutting, appellant notified Mr. Bowman, the Association's secretary-manager, who requested the member to get his prices in line (R. 112-113, 263). There continued, from time to time, price cutting by various merchants. If the price cutters failed to get their prices back in line, it was the policy of Safeway, until restrained by this court order, to meet those prices (R. 239). It was against appellant's general policy to sue any merchant and it did not bring injunction suits under this Act, despite the fact that competitors sold many items below cost, until it was restrained from meeting prices (R. 243). The Association did not file any suits before 1954 (R. 265).

There were eleven witnesses at the trial. Everyone in the grocery industry testified that it is necessary for a grocer to meet competitive prices on traffic items to stay in business. Mr. Kamp, a grocer in Oklahoma City and an officer and director of the Oklahoma Retail Grocers Association, said that you have to meet prices on traffic items but that it is not so important that you meet competition on other items (R. 125). John McCloud, an employee of Safeway for 22 years and price maker in the Oklahoma City Zone, when asked what would happen if a merchant did not meet his competitors' prices on traffic items, said, "Well, he would not have any customers" (R. 296). Mr. Morrison, president of Oklahoma Retail Grocers Associa-

tion in 1954 and a member of its board of directors, stated that the cooperative wholesale establishment from which he purchased suggested to its members that they meet competitive prices on traffic items, and said that in his opinion you can't stay in business unless you do (R. 350). He thought you have to meet traffic item prices day by day, item by item (R. 351).

Every grocer further testified that from his experience and in his opinion the mere meeting of the price of a competitor does not start price wars and is entirely appropriate. Mr. Kamp answered, when asked if meeting prices would cause a price war, "No, it won't," and when asked whether that was a proper practice, answered, "Yes, that is the way it ought to be." Asked if he approved of meeting prices, he answered, "I approve of that, yes, because we know there are certain items that have a small markup" (R. 127). He testified that in order to stay in business it is necessary to reduce prices on traffic items to the competitive level and if everybody else sets the same price, nobody is hurt (R. 128). Mr. Speed, president of a company operating three grocery stores, testified that he set his prices on traffic items in accordance with major competition (R. 165). Mr. Christensen, division manager of Safeway in Oklahoma and Arkansas, an employee of the company since 1923, stated that reducing prices to meet competition does not tend to divert trade (R. 218). Nor does it create price wars (R. 219).

With the exception of price cutting, the witnesses agreed that substantially uniform prices were being charged.

on all traffic items by nearly all grocers. Mr. Bowman stated that he did not think there was any appreciable difference in prices on traffic items (R. 117). Mr. Morrison testified that possibly 100% of the stores would be selling a specific traffic item at three for a quarter (R. 357).

The use of trading stamps increased in Oklahoma during 1952, 1953 and 1954. For instance, one company, Sperry & Hutchinson, had only two or three accounts in 1952 (R. 142). By October 1955, the time of the trial and a year after appellant was restrained from meeting stamp competition, Sperry & Hutchinson had grocery store clients in over 100 towns in the State of Oklahoma (R. 148).

As a result of the increase in stamp competition, appellant considered the advisability of reducing its prices on traffic items to a level equal to the price set by competitors less the value of stamps given by those competitors with the sale of the article. The stamps and double stamps on Wednesdays were being given with the sale of traffic items at statutory cost. Before reducing prices to meet the value of trading stamps given by competition, Safeway was advised by its Oklahoma attorneys that this conduct was permitted by the Oklahoma law (R. 230 and 239).

Appellant felt that it was at a competitive disadvantage when selling traffic items at the same shelf price charged by competitors giving stamps (R. 229). It made several surveys which showed that trading stamps were creating a diversion of traffic from appellant to stamp-giving stores

(R. 563, 564-571, 627-631). Safeway did not wish to give trading stamps to meet this competition because its president, Mr. Warren, like Mr. Kamp and other grocers, was very much opposed to them (R. 277, 464-466).

To offset the price cutting on traffic items by competitors and the effect of trading stamps, appellant reduced prices on approximately 200 non-traffic items, though not below statutory cost (R. 213). Reduction on these items seemed to have no appreciable effect on appellant's volume and did not appear to offset losses suffered to price cutting and trading stamp competition (R. 214).

Appellant then made an extensive survey of prices charged by competitors for various traffic items. It was made by actual purchases by company personnel, supported by cash register receipts and trading stamps received (R. 214). The survey showed that when the prices charged by the competing merchants surveyed were reduced by the value of the trading stamps, a substantial number of the items checked were being sold at prices apparently below statutory cost (R. 573-596).

Before reducing prices to meet trading stamp competition, appellant made another extensive survey of competitor prices. This survey showed some items were being sold by the merchants surveyed at prices below statutory cost before, and a substantial number after, reducing the price by the value of trading stamps or double trading stamps (R. 597 through 618). Appellant did not meet the prices on all the traffic items (R. 463). Instead, it selected the ones it thought the customers were familiar with the price

of (R. 258). Of the thousands of items stocked by appellant, only a handful of traffic items were reduced below statutory cost to meet competition (R. 258, 41-49).

All the witnesses questioned stated that in their opinion the customer got more when given a trading stamp than when not. Mr. Kamp said that he thought trading stamps reduced prices (R. 130). He said that reduction of prices to equalize the value of the trading stamps would be a proper method of meeting that competition, if lawful (R. 131). Mr. Morrison said that if the housewife saved the trading stamp and redeemed it, she got some extra value (R. 353). He testified that he had trading stamp competition for seven months before he decided to meet it by giving cash register receipts (R. 360). Mr. Peloubet, a C.P.A. and author of the many books and articles listed on pages 381-389 of the record, testified that he was a witness for the Sperry & Hutchinson stamp company, that he had testified in a number of other cases around the country for them, and that he did not feel there would be any difference between giving a trading stamp worth 2½ cents on the dollar and returning 2½ cents to the customer with a dollar purchase (R. 411). Mr. Peloubet further said that it is very unusual for the retail grocer to offer a cash discount and that he did not recollect any instance of its being done (R. 401). He was excluding the use of trading stamps, if they be a cash discount. It was agreed that if the purpose of giving the stamps was to receive prompt cash payment, then the stamp merchant was paying 36% per annum for the cash (R. 334, 432).

Counsel for Sperry & Hutchinson stamp company from New York conducted the entire examination of all the expert witnesses on the stamp issue for appellees. The vice-president and general counsel of Sperry & Hutchinson testified briefly. It was suggested that the way to meet trading stamp competition is by giving trading stamps (R. 244).

Most of the stamp-giving merchants sold on a strictly cash basis (R. 146, 489). Appellee Speed made no sales on credit in two of his three stores (R. 155). He gave trading stamps in all of his stores. It was stipulated that the stamps involved were worth not less than 2½ cents on each dollar purchase (R. 478). The record shows that the grocers with the greatest volume paid Sperry & Hutchinson 2% of gross sales for use of their stamps (R. 147, 159). When double stamps were given, the price to the merchant giving them doubled, or cost 4% of gross sales (R. 159). It was stated that if trading stamps do not result in a very substantial increase in volume, they cause the merchant issuing them to lose money (R. 324-325).

A U. S. Department of Commerce survey showed that for the year 1953 in supermarkets the average net profit before taxes was 2.35% of sales (R. 313). The Department of Commerce estimated that appellant made between 3 and 4% of the total grocery sales in the United States in 1954 (R. 315).

Suit was filed to enjoin appellant's sales below statutory cost and appellant was placed under a temporary restrain-

ing order on October 25, 1954. The order continued in effect through the trial on the merits in October of the following year. It prohibited appellant from selling below cost as defined in the Act without any exception.

The Association brought suits against about a half dozen other retail grocers at the same time this suit was instigated against appellant (R. 122). After it was enjoined, appellant filed a number of suits against competitors selling below cost (R. 111-112, 265). Appellant also commenced giving its own trading stamps, called Cash Savers, after the injunction against it issued (R. 270). On June 28, 1955 appellant filed a cross-action in this cause seeking to enjoin appellees from giving trading stamps with sales made at statutory cost.

Every price that appellant is charged to have set below statutory cost is set forth in Exhibit B of plaintiff's petition (R. 41-49). The record shows that it was stipulated that each price shown in Exhibit B was set to meet the price of competition. In the towns of Enid, Shawnee, Norman and Tulsa, the prices charged by appellant were stipulated to be "equivalent to, and equally low priced of one or more of its competitors established on a prior date in the town in which said articles were sold" (R. 200). All other prices were set to meet trading stamp competition. It was stipulated that the prices at which appellant sold these articles were reduced approximately 5.6% on Wednesdays and 2.8% on other days of the week below the shelf prices charged by competition giving trading stamps (R. 198, 200, 478). It was further stipulated that the prices

set by trading stamp competition were at or near the minimum price and that "if the stamps, valued at not less than 2.5%, had the effect of reducing the sales price at which the items were sold, then the resultant sales prices were less than the minimum allowed by the Oklahoma Unfair Sales Act" (R. 478).

At the close of the trial, the District Court enjoined appellant from meeting the prices of competitors selling at less than their cost and from reducing its prices below competitors' prices by an amount equal to the value of trading stamps given by those competitors where the reduction resulted in a price below statutory cost. The prohibition against meeting a competitor's price that is below cost applies whether or not the price met is in violation of the Act. The trial court refused to enjoin appellees from giving trading stamps with items sold at statutory cost and enjoined appellant from giving trading stamps having a value in excess of 3% of the sales prices of items sold at or near statutory cost (R. 449-453).

The Supreme Court of Oklahoma affirmed, stating appellant "* * * set illegal prices for the sole purpose of meeting prices of its competitors * * *." On the trading stamp issue it said "* * * we hold that the giving of such stamps would not constitute a price cut or unfair competition, but such stamps merely constituted a discount for cash" (R. 633 through 645). Four Justices concurred in part and dissented in part (R. 645-647).

SUMMARY OF ARGUMENT

QUESTION ONE

The Oklahoma Act is the only one of thirty such statutes that prohibits meeting all prices below statutory cost, whether lawful or unlawful.

The Oklahoma Courts have been confused by this meeting competition defense because it is the only one of its kind.

A violation of this Act has three elements; sale below cost plus 6%, unlawful intent and prohibited effect.

A competitor's price cannot be met where only the first element, sale below cost plus 6%, is present.

The prohibition against meeting lawful prices violates due process and equal protection.

There are many reasons why a grocer sells below cost plus 6% without any unlawful intent or prohibited effect.

The question does not involve unlawful prices, or sales with the purpose or effect of damaging competition.

Absolute price fixing statutes at least apply equally.

Nebbia v. New York is distinguishable.

This Act embodies no adjustment or accommodation to the principle it impinges or the circumstances in which it operates.

This statute paralyzes the regulative force of competition.

Property, including the right to compete, must be secured or liberty cannot exist.

The Fourteenth Amendment protects the economic liberty of our citizens.

QUESTION TWO

Because of the Oklahoma Unfair Sales Act, competing grocers were selling the same grocery items at the same prices, the statutory minimum. Competitors of appellant gave trading stamps with their sales at the statutory minimum. Appellant met this competition by reducing prices on some items to offset the value of the stamps. From this it was enjoined. An injunction against giving stamps with sales at statutory cost was denied.

It is arbitrary and discriminatory to permit giving trading stamps with sales made at the statutory minimum while prohibiting a reduction in price by the value of the trading stamps, or the gift of cash or commodities.

Trading stamps are widely used in the grocery industry. They are effective competitively and this competition must be met.

A cash discount is a price reduction.

If appellant's competitors may give a cash discount in the form of a trading stamp, appellant may give a cash discount in cash.

The Oklahoma legislature did not contemplate the use of trading stamps.

It is arbitrary to force grocers to give stamps and consumers to pay for them.

QUESTION THREE

Appellant is limited in the percentage of discount it can give with sales at cost to 3%. Its competitors are under no such limitation. The statute does not fix any limitation.

The injunction is a denial of equal protection of the laws.

The legislature cannot delegate to the courts the power to fix the percentage of discount because there would inevitably be inequal application.

Merchants must seek out the most effective trading stamp to use in their stores.

No standard is fixed by the Oklahoma statute on which citizens can base their conduct.

QUESTION FOUR

The Oklahoma Unfair Sales Act is in irreconcilable conflict with the federal antitrust laws.

The federal antitrust laws encompass within their scope local retail sales by interstate chains.

The policy of the Sherman Act is to prevent restraints of trade and monopoly and to maintain price competition. The Oklahoma Act impairs the effectuation of that policy.

The Robinson-Patman Act has covered the very conduct sought to be regulated by the Oklahoma Act and has preempted the field.

The Federal Trade Commission has jurisdiction over the subject matter. The amendment enlarging the powers of this Commission to include the retail sales of meat in September 1958 further reveals federal preemption.

Oklahoma had no jurisdiction over the subject matter, because of the federal antitrust laws.

Because of the permanent injunction, the Courts of Oklahoma are exercising continuing control over appellant's prices.

Denial by the State of Oklahoma of rights conferred by federal law constitutes a violation of due process and equal protection of the laws.

ARGUMENT

QUESTION ONE

The issue raised in Question One is elusive. Its elusory nature arises in part because the Oklahoma legislature in drafting the statute under attack departed from the course of all other states in its meeting competition exception. Similar statutes enacted in three states contain no exception, apparently assuming that the purpose of meeting competition fairly negates any claim that the prices are established to injure competition.[1] Eight states except sales below cost set in good faith to meet competition or the prices of a competitor.[2] Seventeen states and the Territory

[1] Connecticut, Rhode Island, South Carolina.

[2] Arizona, Idaho, Kansas, Maryland, Massachusetts, Nebraska, Pennsylvania and Wisconsin.

of Hawaii permit good faith meeting of legal prices, legal competition or lawful competition.[3]

As now construed, and as here applied, the Oklahoma Act prohibits absolutely prices set to meet prices of a competitor selling below his statutory cost, whether such prices are lawful or unlawful.

Further difficulty in securing the issue derives from the ambiguous treatment of the meeting competition exception. As often as not, appellees and the Oklahoma courts have treated the exception as permitting the meeting of lawful prices. Thus the Association, in its reply to appellant's answer, states that the Act "* * * permits a retailer to meet the price of a competitor who is selling 'at cost to him,' i.e., at a lawful price" (R. 89). Judge Spellman, the trial judge, in his lengthy oral opinion, states, "A retailer may sell below his cost without violating this Act, to meet the lawful price of his competitor, but cannot sell below his cost on this excuse when the price of a competitor is an unlawful price * * *" (R. 440-441). The Supreme Court of Oklahoma falls into a similar ambiguity. While resting the very constitutionality of the Act on the requirement that an unlawful purpose exist, it equates a price set for the sole purpose of meeting a competitor's price with an unlawful purpose. It follows that prices below cost cannot be met, whether legal or illegal.

Obfuscated by the Court's holding is the admitted fact that prices below statutory cost are legal, absent the pur-

[3]California, Colorado, Kentucky, Iowa, Maine, Minnesota, Montana, New Hampshire, New Jersey, North Dakota, Oregon, Tennessee, Utah, Virginia, Washington, West Virginia, Wyoming.

pose and effect of injuring competition. Section 598.3 of the Act, which defines the offense, is captioned, "Sales Below Cost Prohibited in Certain Cases." A legal price cannot be enjoined.

A violation of this Act has three elements:

1. A sale below cost, computed by adding invoice or replacement cost, plus freight and cartage, plus state and federal taxes, plus a markup to cover the cost of doing business of 6% in the absence of proof of a lesser cost; and,

2. The intent thereby to injure competition; and,

3. As a result thereof, injury to competition.

Under the permanent injunction appellant is proscribed from meeting any price below the statutory cost of its competitors (R. 452).

Finally, the most abstruse aspect of this first question is the practical effect of the injunction. It is the measure of this effect that determines the validity of the Act.

In essence, the claim is that the Act prohibits merchants in Oklahoma from meeting lawful prices of competitors and that this prohibition is so arbitrary and discriminatory as to violate due process and deny equal protection.

The question does not involve the meeting of unlawful prices, or sales for the purpose or with the effect of damaging competition.[4]

[4] All Unfair Sales Acts require the showing of either an unlawful purpose or effect to constitute a violation. The Robinson-Patman Act, 15 U. S. C. A. §13a, prohibits sales made at "unreasonably low prices for the purpose of destroying competition or eliminating a competitor." Senate Bill 11, 86th Congress, 1st Session, a proposed amendment to §2(b) of the Clayton Act, as amended, would prohibit the meeting of a competitor's price where "the effect of the discrimination" is to lessen competition.

What are the lawful prices that cannot be met? They are the prices below statutory cost where there is no unlawful purpose or effect. Statutory cost is substantially above the cost to the grocer of placing the item on the shelf for sale.

The purposes for which a grocer might sell below statutory cost without intending any injury to competition are innumerable. That the legislature intended to permit such sales is manifest. That the lawful purposes permitted far transcend isolated transactions involving seasonable goods, perishables, damaged items, liquidations, forced sales and the like, is illustrated by their specific exemption from the Act (Section 598.6).

Among the many reasons a grocer might sell at less than 6% above his actual cost are the promotion of goodwill, weekend and holiday specials, industry custom and practices, advertising, the promotion of particular brands or products, movement of overstocked items or slow moving items, introductory offers, the maintenance of historic price differentials among different items, to retain customers or market position.

While examples of the lawful prices which cannot be met are limitless, several might assist in evaluating this restriction.

A grocer sells sugar, flour, coffee, detergent, baby food and other traffic items at one cent above invoice cost which is less than statutory cost. His reason is he believes he makes more money on these items at this mark-up than he does on fresh caviar with a 60% mark-up because of the

difference in volume, ease of handling and absence of loss from spoilage. He wants his customers to be able to buy staple traffic items at the lowest figure which yields a fair return and does not result in subsidizing the cost of doing business in thousands of slow moving items on his shelves. He has no intention of diverting trade or injuring competition. His prices are lawful. They cannot be met.

A grocer sells at his statutory cost and gives trading stamps worth not less than 2½% of the prices of the groceries purchased. His competition is enjoined from meeting his net price. An injunction against his continuance of the practice is denied. This is, of course, what happened here in part.

A grocer buys Easter hams at 50 cents per pound and sells them at the same price throughout the week preceding Easter. He stocks 7,500 other items which have a mark-up varying from 0 to 60%. His store operates at a profit even if he gives the hams away. His sole purpose in selling the hams at his invoice cost is to make friends, create good will and to cater to the known appetite of his customers for Easter hams. He has not violated the Act. His price cannot be met.

A grocer buys grade A canned peaches at a very favorable price and sells them with a 10% mark-up. He lowers his price on grade B canned peaches below his statutory cost to maintain the customary price differential of three cents between grades A and B. Otherwise all his customers buy the grade A peaches at the cheaper price. He has not violated the Act. His price on grade B cannot be met.

Grocer A reduces his prices on a number of items below his cost to meet above-cost prices of Grocer B, a competitor. Grocer C is in competition with Grocer A, but not Grocer B, because of geographic location. Grocer A has not violated the Act. Grocer C cannot meet his prices.

A grocer is in a neighborhood of very low income families. He wishes to sell them bread at his invoice cost to permit his customers to buy it as cheaply as possible while he suffers no loss on its sale. He has not violated the Act. His price cannot be met.

Moreover, assuming the grocer meeting competition in each instance cited above has the purpose of diverting trade, can it be said that there results a tendency to deceive, to substantially lessen competition, or to unreasonably restrain trade, or tend to create a monopoly in any line of commerce? This is a question of fact that will never be in issue under this injunction.

Where is relief for the grocer who sues to enjoin his competitor from selling below cost, and the court holds there was no lawful intent or effect though sales are being made below cost? He cannot meet the price; he has failed to enjoin it. A more patent and harmful discrimination is difficult to imagine.

In scores of cases brought under Unfair Sales Acts, courts have refused to enjoin prices below statutory cost because an unlawful intent has not been established. Illustrative is a recent case in which the Supreme Court of Maine said:

> "Under this law the plaintiff was required to make out no more than a prima facie case. This was done

and the plaintiff rested. The defendant by necessity was forced to offer a defense and explain the purpose and reason for the sale. This was the only evidence as to what motivated the defendant's action and was not contradicted. The defendant's position is that the sale was not made to injure competitors or destroy competition, and its purpose was to make friends and create good will.

"The purpose was legitimate and is not covered by the Unfair Sales Law. It is a practice resorted to by merchants from time immemorial and recognized as proper by the courts and business generally. Where attempts have been made, as we have seen before in this opinion, to prevent it by legislation, such laws have been declared unconstitutional." *Wiley v. Sampson-Ripley Company, 120 A. 2d 289 (Me., 1956).*

In *Millers Groceteria v. Food Distributors, 109 P. 2d 637 (Colo. 1941)*, the defendant was found to have reduced prices below cost for the purpose of attracting attention to the opening of a new store. This was held to be a complete defense.

In *Balzar v. Caler, 74 P. 2d 839 (Cal. 1937)* and *Ellis v. Dallas, 248 P. 2d 63 (Cal. 1952)*, the defendants established as their purposes the stimulation of their own sales. The sales below cost were held legal, because there was no unlawful intent.

These cases only serve to illustrate the obvious.

An absolute prohibition against sales below cost in an industry as complex as this and in an economy as dynamic as ours would be paralyzing and crippling. The resulting crystalization and stagnation would destroy competition. But it would at least have the virtue of applying equal

justice (if justice it be) under law. The Oklahoma Act permits the sale below cost but prohibits competition from meeting it.

A comparison with the statute involved in *Nebbia v. New York, 291 U. S. 502 (1934)* reflects controlling distinctions. There the State was dealing with a single commodity, milk. "Save the conduct of railroads, no business has been so thoroughly regimented and regulated by the State of New York as the milk industry." *Nebbia v. New York, op. cit., p. 521.*

An emergency existed and the legislature considered various remedies. A joint legislative committee considered the problems for nearly a year. It held many hearings involving hundreds of witnesses and reports. Finally an act was passed creating a milk control board with power to fix the price to be charged by a store for a quart of milk. The measure was temporary to meet an existing emergency.

> "While emergency does not create power, emergency may furnish the occasion for the exercise of power * * * (426) and if state power exists to give temporary relief from the enforcement of contracts in the presence of disaster due to physical causes such as fire, flood or earthquake, that power cannot be said to be non-existent when the urgent public need demanding such relief is produced by other and economic causes * * * (439-440). It is always open to judicial inquiry whether the exigency still exists upon which the continued operation of the law depends (442)." *Home Building and Loan Assn. v. Blaisdell, 290 U. S. 398, 426, 439-440, 442 (1933).*

Comparison with the legislature history of the Oklahoma Unfair Sales Act is quite remarkable. The original Act, passed in 1941, provided in Section 6, along with the

other special exceptions to sales below cost, sales made in good faith to meet competition. On March 29, 1949, Justice O'Neill filed the opinion of the Supreme Court of Oklahoma first announcing its decision voiding the Unfair Sales Act, though the case was not finally decided until July of 1949. *Englebrecht v. Day, 208 P. 2d 538 (1949)*. On April 6, 1949, a week after the majority opinion in the *Engelbrecht* case was first filed, House Bill 488 was introduced in the Oklahoma legislature. It was referred to the House Committee on Business and Industry which made its "do pass" report on April 14. On April 26, 1949 the bill was passed by the House and sent to the Senate. The Senate passed the bill without amendment on May 11. It was sent to the Governor the following day and signed May 18, 1949. Thus the bill, from introduction to final passage, was in the legislature but 35 days. Only 50 days transpired from the first announcement that the Unfair Sales Act was unconstitutional until the Governor signed the new Act. There was no attempt to determine the need for the new legislation, no study was made of conditions in 1949, and no real consideration was given to the drastic change made in the meeting competition defense.

The *Nebbia* case starts with the proposition that "Under our form of government the use of property and the making of contracts are normally matters of private and not public concern. The general rule is that both shall be free of governmental interference." *Nebbia v. New York, op. cit., p. 523.*

Before *Nebbia*, the power of the state to fix prices in "private" businesses was denied because violative of due

process. *Wolff Packing Co. v. Court of Industrial Relations, 262 U. S. 522 (1922); Williams v. Standard Oil Co., 278 U. S. 235 (1928); New State Ice Co. v. Liebmann, 285 U. S. 262 (1932).* In the only written dissent in these three cases, Justice Brandeis, with whom Justice Stone concurred, said:

New State Ice Co. v. Liebmann, op. cit. at p. 302.

> "A regulation valid for one kind of business may, of course, be invalid for another; since the reasonableness of every regulation is dependent upon the relevant facts * * *. Whatever the nature of the business, whatever the scope or character of the regulation applied, the source of the power invoked is the same. And likewise the constitutional limitation upon that power. The source is the police power. The limitation is that set by the due process clause, which, as construed, requires that the regulation shall be not unreasonable, arbitrary or capricious; and that the means of regulation selected shall have a real or substantial relation to the object sought to be obtained." *New State Ice Co. v. Liebmann, op. cit., at pp. 301-302.*

Moreover in *Nebbia*, while there were different prices on different types of milk, and for different types of sellers, each retailer was restricted to the identical price. One grocer was not permitted to charge less than his competitor and then given power to enjoin that competitor from meeting his lower price. Embodied in the Oklahoma Act is the germ that can destroy members of the industry the Act was designed to protect. Fixing prices can be justified in an emergency. Fixing prices which can be met while not fixing prices which can be set is a dangerous business.

The retail grocery industry operates on a smaller margin of profit than any industry in the economic history of

western civilization. The industry leaders rarely show a profit of one cent on each dollar of sales.[5] Department of Commerce statistics in the record show the industry average was less than 2½¢ per dollar of sales in supermarkets.[6] These sales include many thousands of different items. Some move very slowly, perhaps one a week. Others are sold by the hundreds every day. Some are relatively expensive and tie up capital. Some are easily damaged. Many are subject to spoilage. Volume sales, low overhead and low mark-up are standards of the industry. While location, good service and effective promotions are important to success, prices are the first concern of the consumer. All grocers who testified for the Oklahoma Retail Grocers Association stated positively that a grocer must have competitive prices on traffic items to remain in business.

As applied, the prohibition imposed below is clearly arbitrary and discriminatory. It embodies no consideration, accommodation or adjustment to the principles it impinges, the circumstances in which it operates, or the dire significance of its imposition. It is decisive, but unreasoning.

It denies the right to meet a price a competitor is free to set when meeting the price is essential to survival. The right is denied at the only level at which price competition is effective, since nearly all grocers are selling traffic items at statutory cost or below.

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[5]The industry leaders rarely make a 1% net profit on net sales. Supermarket News, the industry newspaper, in its June 30, 1958 issue, at page 1, reports that "for the first time in seven years A & P's ratio of net profits to net sales last year exceeded 1 per cent."

[6]Ratio of sales to profits is not determinative of profitability of the business since one merchant might make more sales at a lower cost of doing business.

The principle restricted is economic competition: the efforts of two, or more, parties acting independently, to secure the custom of third parties by the offer of the most favorable terms. "The heart of our national economic policy long has been faith in the value of competition." *Standard Oil v. F. T. C., 340 U. S. 231, 248 (1951).*

Today, more than at any time heretofore, we are able to recognize that the chief difference between our way of life and life under totalitarian governments is the effective competitive nature of our economy. Economically, ours is the most complex and productive nation in history. Every liberty we possess, every right we esteem, is contingent on the continuance of what Mr. Justice Stone called "the regulative force of competition." Stone, J., dissenting, joined by Holmes, J., and Brandeis, J., *Tyson & Bro. v. Banton, 273 U. S. 418, 451 (1926); Ribnik v. McBride, 277 U. S. 350, 360 (1928).* Far from being the subject matter of restriction, preservation or revitalization of the "regulative force of competition" is the very justification for price regulation by the state.

> "An examination of the decisions of this Court in which price regulation has been upheld will disclose that the element common to all is the existence of a situation or a combination of circumstances materially restricting the regulative force of competition, so that buyers or sellers are placed at such a disadvantage in the bargaining struggle that serious economic consequences result to a very large number of members of the community." Stone, J., dissenting in *Tyson & Bro. v. Banton, op. cit., 451.*

This statute paralyzes the regulative force of competition in this most competitive, price conscious industry. It is perma-

nent legislation, not designed to meet any present emergency.

Security of property is not a new value placed on constitutional government. Hamilton pointed out in *The Federalist, Number 79*, that "in the general course of human nature, a power over a man's subsistence amounts to a power over his will."

John Adams noted in his *Discourses on Davila* that "Property must be secured or liberty cannot exist."[7]

At the same time, John Taylor of Caroline County, Virginia, would say,

> "Blackstone has treated of the rights of persons and the rights of things; but the rights of man include life, liberty and property, according to the prevalent fashion of thinking in the United States. The last is the chief hinge on which social happiness depends. It is therefore extremely important to ascertain whether it is secured with the same principle with our other rights."[8]

Property is far more important today to the preservation of liberty than heretofore because man is far less independent economically. For the very necessities of life we are fully interdependent. The geographic frontier is gone.[9] It is replaced by the business frontier. The essence of the business frontier is competition. Without competition, the frontier is closed. This competition is more than an incident

[7]Reprinted in Coker, *Democracy, Liberty, and Property*, p. 466, The Macmillan Co., 1942.

[8]Taylor, *Construction Construed and Constitutions Vindicated*, reprinted Id., p. 496.

[9]This general idea tested against the writings of Frederick Jackson Turner elicits provocative thoughts. See Turners *The Frontier in American History*, Henry Holt, N. Y., 1920.

of the ownership of property. It is a fountainhead of property: the impartial method of reaping the harvest of labor and capital.

Of course, competition can be restricted. If need be, it can be suspended. The judiciary is tolerant toward the endeavors of our legislatures to cope with the terribly complex economic difficulties with which we are confronted. Experimentation is necessary to the solution of these problems. The United States Supreme Court does not sit as a superlegislature to weigh the wisdom of legislation, but "the legislative power has limits." *Day-Brite Lighting, Inc. v. Missouri, 342 U. S. 421, 423 (1951).*

The absolute prohibition of meeting lawful prices regardless of intent or effect has no rational basis. Can meeting a lawful price be an unfair sale? The operation of the statute is wholly arbitrary and is not designed to accomplish any policy that the legislature is free to adopt. The critical gap between the price which can be met and the price which can be enjoined is destructive of property.

There is a constitutional guarantee against arbitrary and discriminatory acts of legislatures affecting property rights and business liberties of citizens. In *Fletcher v. Peck, 6 Cranch 87, 139 (1810),* Chief Justice Marshall announced what his biographer has eulogized as, "* * * fundamental principles for the guidance of the States and the stabilizing of American business." Albert J. Beveridge, *The Life of John Marshall, Volume III, Ch. 10.* Countless cases have considered the power of the state over the economic liberty of its citizens. A certain ebb and flow in the degree of

state interference permitted is discernible. As examples compare *Munn v. Illinois, 94 U. S. 113* in 1877 to *Ribnik v. McBride, 277 U. S. 350* in 1928 to *Nebbia v. New York, op. cit.* in 1934.

For a number of years, the highest courts of the several states have struggled with statutes restrictive of competition. They have disagreed and divided. Many statutes have fallen in the last few years. Among the fallen are sales below cost acts.[10] To date, this Court has not considered such a statute.[11]

Heretofore no sanction of government has prohibited a merchant from meeting the legal prices of his competitors selling the same goods in the same market.

This is a most remarkable departure from all precedent. The economy of this nation has enjoyed no right more fundamental than the equal right to compete.

Elsewhere courts have viewed the matter differently.

> "One who reduces his prices in defense of his economic life cannot be guilty of eliminating competition or

[10]The statutes may be divided as to types. The various types developed contemporaneously and are similar in purpose.

Forty-five states now have or have had Fair Trade Acts. The constitutionality of roughly two-thirds of these has been tested and half have failed to meet the test. The following states have voided these Acts: Arkansas, Colorado, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Nebraska, New Mexico, Ohio, Oregon, South Carolina, Utah and West Virginia. Four of these fell in 1957.

The constitutional test of below cost sales acts has been less frequent. Even so, eight of these acts have been invalidated by the following states: Arizona, Colorado, Kansas, Maine, Maryland, New Jersey, Oklahoma, Pennsylvania. Oklahoma and Pennsylvania statutes were re-enacted after correcting some constitutional defects.

Related acts, including geographic price discrimination and special industry laws, have been stricken in numerous instances.

[11]The trade mark-property rights justification for the Fair Trade Acts is absent here.

his competitors." *Ben Hur Coal Company v. Wells, 242 F. 2d 481, 486 C. A.-10, 1957, cert. den., 354 U. S. 910 (1957).* Cf. *Balian Ice Cream Co. v. Arden Farms, 231 F. 2d 356, cert. den., 350 U. S. 991 (1955).*

"The fact that competitors were charging the same or lower prices for a reasonable time before and after the alleged violation was valid evidence that the defendants' prices did not, and even could not, have the effect of injuring such competitors or destroying competition in the market involved." *State v. Wolkoff, 85 N. W. 2d 401 (Minn., 1957).*

The impact of the reasoning behind these opinions is further enhanced where the prices being met are lawful and there is no difference between sellers forming a rational basis for the discrimination.

While not involved here, and lacking the discriminatory qualities present in the Oklahoma Act, it is doubtful that an absolute price fixing statute of such sweeping scope and magnitude could stand. Bronson Alcott might compose a constitution for the regulation of the universe in perpetuity on a scrap of parchment a century ago, but modern society is not so simple. It is one thing to fix prices on milk temporarily to meet an emergency: quite another to fix minimum prices on every item stocked by every wholesaler and every retailer in a state without any consideration, accommodation or adjustment to the principles it impinges, the circumstances in which it operates, or the significance of its imposition.

Illegal intent is essential to the constitutionality of Unfair Sales Acts. *Fairmount Creameries v. Minnesota, 274 U. S. 1 (1927); State v. Packard-Bamberger & Co., 8*

A. 2d 291 (S. Ct. N. J., 1939); Commonwealth v. Zasloff, 13 A. 2d 67 (S. Ct. Pa., 1940); Advisory Opinion of the Justices, 132 A. 2d 47 (Me., 1957). Oklahoma expressly recognizes this, but it has said meeting competition selling below cost is in itself the illegal purpose. A grocer in Oklahoma can sell below his cost and invoke the aid of the State to prohibit his competitors from meeting his price.

Time has forged a dichotomy between what are thought of as the rights of man and the rights of property. The split has become so great that many claim the rights of property are not constitutional rights. Some took the decision in *Nebbia v. New York, op. cit.*, as the *coup de grace* of the doctrine of constitutional guarantee of freedom from arbitrary or discriminatory legislation in the field of business and economic regulation. Since 1934 this Court has extended through the complexities of modern society the greatest degree of personal liberty ever enjoyed. Relative dormancy has marked the treatment of freedom from arbitrary economic restraint, particularly in the field of business regulation.

Nevertheless, the Court has never abdicated its constitutional function of protecting property and business from arbitrary and discriminatory legislation.

> "It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property. Equality in the enjoyment of property rights was regarded by

> the framers of that Amendment as an essential precondition to the realization of other basic civil rights and liberties which the Amendment was intended to guarantee." *Shelley v. Kraemer, 334 U. S. 1, 10 (1947).*

The Constitution protects free enterprise, competition, business and property from arbitrary restraint. "As no constitutional guarantee enjoys preference, so none should suffer, subordination or delegation." *Ullman v. United States, 350 U. S. 422, 428 (1955).*

History, reason and the contemporary scene indicate that the distinction between human rights and property rights falsifies reality. Neither can long endure without the other. Without personal liberty, man has no protection in his property. Without property man has no power to exercise his personal liberty. You cannot eat free speech.

> "Life and personal liberty are, no doubt, to be protected by law; but property is also to be protected by law, and is the fund out of which the means for protecting life and liberty are usually furnished. We have no experience that teaches us, that any other rights are safe, where property is not safe."[12]

Laws dealing with personal liberties are as surely adjustments and accommodations of principles to circumstances as are laws regulating business. In either instance, "Liberty implies the freedom from arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interest of the community." *Chicago Ry. v. McGuire, 219 U. S. 549, 567 (1910).*

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[12] *Journal of Debates and Proceedings in the Convention of Delegates Chosen to Revise the Constitution of Massachusetts, 1820 (1853), p. 312.*

Economic turbulance, depression and unbalance have brought forth economic regulation. Political crises, disorders and pressures have brought forth political regulation. The felt necessities of the time in some measure demark the extent to which the state can exercise its power.

The continued existence of a state depends on some degree of flexibility in the limits of state action. In times of military invasion, lovers of liberty might suspend the operation of the civil courts or relocate enemy aliens. Circumstances might permit absolute price fixing, or government operation of private factories. Under the Constitution this Court finally determines whether, under the circumstances, the action is arbitrary.

The evaluation is more difficult in the field of economic liberty because it involves more complex facts and less poignancy. Greater diligence is therefore necessary.

Thomas Jefferson, in his *Notes on Virginia*, first printed in 1785, had decried the introduction of factories into America. Constrained to defend his reversal of position, he said in 1816:

> "But who in 1785 could foresee the rapid depravity which was to render the close of that century the disgrace of the history of men * * * experience has taught me that manufacturers are now as necessary to our independence as to our comfort * * * in so complicated a science as political economy, no one axiom can be laid down as wise and expedient for all times and circumstances * * *."[13]

[13]Letter to Benjamin Austin, January 9, 1816, *The Writings of Thomas Jefferson*, ed. Paul Leicester Ford, Volume 10, p. 10.

So do the circumstances determine when a restriction is arbitrary. In this era of superlegislation, the most regulated people in the world must have some precision, some definitiveness in the mandates governing them. Legislation must approach a solution to the problem it purports to meet.

No jurisdiction under our Constitution has ever prohibited one merchant from meeting the lawful prices of another without regard to differences in circumstances between the two.

QUESTION TWO

The trading stamp question is relatively simple; the ruling below is palpably arbitrary.

Competing grocers were selling identical grocery items at the same prices, the statutory minimum. They made strictly cash and carry sales. No credit was extended customers. Some grocers gave trading stamps with the sales worth at least 2½% of the sales price and not less than 5% on double-stamp days. Appellant, to meet trading stamp competition, reduced some of its prices by an amount equal to the value of the trading stamps.

The trial court enjoined the meeting of trading stamps by price reductions in an amount equal to the value of the stamps given. It refused to enjoin giving of the stamps with sales at statutory cost. The Supreme Court of Oklahoma

affirmed, saying they "* * * did not constitute a price cut or unfair competition, but that such stamps merely constituted a discount for cash."

Appellees' expert witness, Mr. Peloubet, testified that he knew of no instances in which a retail grocer gave a discount for cash payment excepting the use of stamps. What does it mean when a merchant who sells only for cash gives a discount for cash payment in an industry where such discounts are unknown? Mr. Peloubet, who had testified over the country for the Sperry & Hutchinson trading stamp company, said he saw no difference between giving a stamp and giving its equivalent in cash.

The treatment of the stamp as a cash discount is obviously a fiction. The fact that accountants can treat it several ways does not alter its essential nature. If a grocer can sell ten pounds of sugar for one dollar and give the buyer a trading stamp worth 2½ cents, cannot his competitor meet that price by selling the sugar for 97½ cents? Is a grocer to be forced to give trading stamps because his competitor chooses to, or deny his customers equal value on purchases and himself the advantage of competitive prices? This is what appellant has been forced to do, along with other unwilling grocers in Oklahoma. Today such competition in Oklahoma is relegated to trading stamps. Who has the best stamp?

The question of the trading stamp never occurred to the Oklahoma Legislature. It made no provision for them. Indeed, it made no provision for a cash discount at retail.

Yet the courts below have seen fit to permit the giving of trading stamps with sales made at cost, when it is obvious that their sole purpose is to divert trade. What other inter might be found when their cost is 2% of gross sales, twice the net profit of the industry leaders? How is this cost to be offset?

Moreover, the small grocer cannot afford stamps. Their cost is prohibitive to him. The result is sheer caprice. Nebbia, the Rochester grocer, never even contended that giving a loaf of bread with two quarts of milk sold at the minimum price did not reduce his price below the minimum, nor did he give a piece of paper good for one loaf of bread and call it a discount for cash payment.

The incredible vitality of the trading stamp in today's market is difficult to conceive. In 1955, trading stamp companies grossed in excess of six hundred million dollars.[14] Surveys showed half the families in the country saving stamps.[15] Retailers offering stamps are estimated to have made 12% of all retail sales in the United States in 1957.[16] Supermarkets and other food stores are the largest dispensers of trading stamps.[17] Appeal of the trading stamps to consumers must not be underestimated. "The

[14]"Do Trading Stamps Affect Food Costs?", p. 1, Marketing Research Report No. 147 (Jan. 1957), U. S. Dept. of Agriculture.

[15]"Trading Stamp Practice and Pricing Policy," Albert Haring and Wallace O. Yoder, Interim Release (May 7, 1957), School of Business, Indiana University.

[16]"Who Profits From Trading Stamps?" Eugene R. Beem, Harvard Business Review, Nov.-Dec., 1957, pp. 123-136.

[17]"Trading Stamps," Bureau of Business Research, Indiana University School of Business, Indiana Business Report No. 21, Harvey L. Vredenberg, p. 24.

reasons for strong consumer acceptance of stamps appear to be basically economic. Most stamp savers do not think store prices have been marked up as the result of stamps, so premiums are regarded as an actual plus for the family's well-being."[18]

Volume of sales usually increases substantially when a merchant commences using trading stamps.[19] A recent national survey involving 304 dealers using trading stamps shows the increase in sales attributed to the use of trading stamps in food stores for the first half of 1956 as compared to the corresponding period in 1955. Supermarkets achieved an increase in volume of sales averaging 10.2% where trading stamps were given as compared to a 6.7% average for stores not giving trading stamps.[20] Meeting this stamp competition is an economic necessity. There is a tremendous body of trading stamp literature.[21]

The effect of trading stamps on the grocery industry is evidenced by one of the many full page advertisements run by the Sperry and Hutchinson stamp company in national magazines. On March 24, 1958, that company ran a full

[18]"Who Profits From Trading Stamps," at pp. 125-129, supra, footnote 13.

[19]"Do Trading Stamps Affect Food Costs," p. 2, supra, footnote 12.

[20]"How Trading Stamps Affect Volume and Earnings," J. J. Trout, Progressive Grocer, Vol. 35(8): 48-55 (Aug. 1956).

[21]See, for example, the six-page bibliography in "Trading Stamps," supra, footnote 14, and "Trading Stamp Practice and Pricing Policy," Bureau of Business Research, Indiana University School of Business. Edited by Albert Haring and Wallace O. Yoder. 390 pp.

page ad in Time Magazine, at page 43, which had half-inch headlines proclaiming:

OVER HALF OF THE NON-STAMP SUPERMARKETS HAVE LOWERED FOOD PRICES BECAUSE OF THE TRADING STAMP'S COMPETITIVE PRESSURE

After supporting its statement by a national survey the ad went on to say:

> "At the same time, supermarkets that give stamps have remained competitive within normal price ranges. With increased volume paying for the cost of the stamps in most instances, stamp stores have been able to maintain prices, or even lower them."[22]

Trading stamps seem definitely to be hastening the decline of the small food stores.[23]

In December 1958, the Department of Agriculture issued a report titled "Trading Stamps and Their Impact on Food Prices."[24] Among other things the report stated:

> "Trading stamps are not new; they have been used by retailers as a promotional device for more than half a century. Their phenomenal growth during recent years has been due largely to their wide adoption by food retailers, mainly supermarkets. Because of the importance of food in our daily lives, the question of who actually bears the cost of trading stamps is

[22]Cf. "On Being Fooled by Figures: The Case of Trading Stamps," by Robert H. Strotz, The Journal of Business of the University of Chicago, Vol. 31, No. 4, October 1958, in which the hypothesis that trading stamps have not materially increased prices to the consumer is convincingly challenged.

[23]"Who profits from Trading Stamps?", *op. cit.* pp. 127-8.

[24]U. S. Department of Agriculture, Marketing Research Report No. 295, 42 pp.

one that concerns all of us. This question is one of the most controversial issues in the history of food retailing. [p. 1.]

* * * * *

"Data from these trading stamp companies show that 57 per cent of their total stamp business during 1956 was with grocery stores. Of the estimated $20 billion in retail sales for which trading stamps were issued during 1956, about $11 billion were made by grocery stores. This sales volume represents about 30 per cent of the total retail grocery sales for the United States, reported to be $39.2 billion in 1956. Most of this volume probably was in supermarkets. The Bureau of Labor Statistics, in a survey among its sample stores during August 1956, found that about 42 per cent of the chain and large independent stores in the sample were offering stamps but only 12 per cent of the small independent food stores were doing so. [pp. 6, 7.]

* * * * *

"CONCLUSIONS

"The total cost of trading stamps used by food stores was about the same in 1957 as it was in 1956 (about $200 million) and it is not expected to be much different in 1958. The advocates of trading stamps claim that stamps more than pay for their cost through reduced charges resulting from increased sales and greater competition. Others believe that the cost of stamps to retail food stores is primarily covered by increased food prices. This study does not fully support either view, but instead, indicates that the cost of stamps was covered in part by reduced costs resulting from increased volume, in part by higher prices, and in part by a decline in profit per dollar of sales.

"Wide variations were found among stores with respect to the effect of stamps. The first stores to take on stamps in a particular area usually use stamps as a competitive device which they hope will increase sales and thereby decrease costs enough to offset the

additional cost of stamps. Some stores adopt stamps as a defensive measure to meet competition of others who give stamps. Stores not using trading stamps as a competitive device may emphasize lower prices to hold present customers and to attract new ones. In some instances, stamp competition is met by giving premiums in ways other than through stamps and by other promotional devices." Pp. 27, 28.

Trading stamps have suffered a long litigious history. They have had detractors and champions. In sympathy with appellee's director Kamp and appellant's former president, Warren, might be found Mr. Justice McKenna who characterized stamps as "* * * an appeal to cupidity lure to improvidence" and "* * * as having the seductive appeal * * *" of a lottery. *Rast v. Van Deman, 240 U. S. 342, 360 (1916).* More often the merchant simply prefers to limit his activity to the commodities in which he deals and to offer the best services and prices within that realm. Stamps are expensive. To be effective they must be advertised and wanted. If the customer does not make his purchases at the store in order to get the stamps, they are a handicap to the merchant. The merchant pays for the stamps whether the customer wants them or not.

Cases which have sustained legislation directly prohibiting trading stamps or placing prohibitive taxes on them include: *Rast v. Van Deman, op. cit.; Tanner v. Little, 240 U. S. 369 (1916); Pitney v. Washington, 240 U. S. 387 (1916); Gambel v. Montgomery, 39 So. 353 (1905); Lansburgh v. District of Columbia, 11 App. D. C. 512 (1897); District of Columbia v. Kraft, 35 App. D. C. 253 (1910), cert. denied 218 U. S. 673 (1910); District of Columbia v.*

Gregory, 35 App. D. C. 271 (1910), cert. denied, 218 U. S. 673 (1910); Sperry & Hutchinson Co. v. State, 122 N. E. 584 (1919); State v. Wilson, 168 Pac. 679 (1917); State v. Crosby Bros., 176 Pac. 321, 670; State v. Merchants Trading Co., 38 So. 443 (1905); State v. Underwood, 71 So. 513; State v. J. M. Seney Co., 107 Atl. 189; Fleetwood v. Read, 58 Pac. 665 (1899); Oilure Mfg. Co. v. Pidduck-Ross Co., 80 Pac. 276 (1910); Sperry & Hutchinson Co. v. Tacoma, 122 Pac. 1060 (1912); Sperry & Hutchinson Co. v. Melton, 71 S. E. 19 (1911); State ex rel. Sperry & Hutchinson Co. v. Weigle, 166 N. W. 54 (1918). As many cases have invalidated such legislation.

During 1957 roughly 100 bills concerning trading stamps were introduced in the legislatures of 35 states of the 43 which had legislative sessions that year. Four states enacted laws affecting the stamps. Kansas prohibited their use, following the District of Columbia which had done so years ago. Cf. *Lansburgh v. District of Columbia, op. cit.; District of Columbia v. Kraft, op. cit.*

While the courts have disagreed, it is difficult to see how it can be said that trading stamps do not reduce prices if substance takes precedence to form.

This Court in *Rast v. Van Deman, 240 U. S. 342, 360 (1916)*, said:

> "* * * all of the schemes have a common character, —something is given besides that which is or is supposed to be the immediate incentive to the transaction of sale and purchase—something of value given other than it * * *."

The proposition was forcefully stated by the New York Court of Appeals in the following terms:

> "No matter how one puts it, the customer who is accorded a cash discount in reality pays that much less for the article which he purchases, and this is nonetheless true, because the return is by way of merchandise rather than coin which may purchase merchandise." *Bristol-Meyers v. Picker, 96 N. E. 2d 177, 179 (Ct. App. N. Y. 1950).* See also, *Colgate-Palmolive Company v. Max Dichter & Sons, 142 F. Supp. 545 (D. C. Mass. 1956).*

The essential nature of the conduct cannot be changed by calling trading stamps a discount for cash.

This point was convincingly made by Mr. Justice Jackson for the four dissenters on the Oklahoma Supreme Court where he said:

> "Reasons which compel an accountant's conclusion do not compel the same legal conclusion. The issues are not the same."

See also, *Colgate-Palmolive Company v. Elm Farm Foods Co., 148 N. E. 2d 861 (Sup. Jud. Ct. Mass., 1958)*, wherein the court said:

> "There is no magic in the words 'cash discount'. When subjected to analysis they are merely an euphemism for what is in reality a price cut."

What lawyer would argue with Mr. Justice Holmes' legal analysis of the trading stamps as "* * * a draft upon another merchant, payable in goods * * *"? *Commonwealth v. Sisson, 60 N. E. 385 (Mass. 1901).* Of course, in many instances the draft is on the merchant giving it and is sometimes payable in cash.

Every argument made under Question One of this brief applies to the trading stamp issue because appellant was doing no more than meeting prices. Appellant was enjoined from meeting prices, while the Court refused to enjoin continued sales at price it was meeting. The ruling "* * * virtually forces competitors to use trading stamps." *Competition From Retailers Issuing Trading Stamps Cannot be Met by Price Reductions Equivalent to Value of Stamps. 36 Texas Law Review 691, 694.* For some reason, or more accurately for no reason, Oklahoma now restricts discounts for prompt payment of cash given by retailers to the media of trading stamps and other evidences of credit and prohibits the meeting of the price which results from use of the trading stamp.

The question for this Court is whether there is a difference between trading stamps and other methods of giving discounts for cash which justifies permitting the former and prohibiting the latter. The only possible distinction between the two prices is that appellant has given the "customary" discount for cash in the customary way, a net price for cash payment.

The way in which the question has arisen tends to obscure a clear focus of the problem. The question is identical with the question which would arise if the legislature of the State of Oklahoma had said, "Retailers may give trading stamps and other evidences of credit in connection with the sale of goods at retail at statutory cost as a discount for the prompt payment of cash; provided that the discount cannot be given

in any other way; further provided that a price discounted below statutory cost cannot be met."

Is the action of Oklahoma arbitrary, or discriminatory?

Why should the housewives of Oklahoma be denied the right to buy at the lowest net price prescribed by the legislature? Why should they be forced to buy with what they want, a trading stamp? Why should the merchants be driven to use trading stamps? Why should they be denied the right to give the type of discount they choose? Why should the trading stamp companies be granted, as a practical matter, a state monopoly of the cash discount business?

What policy was the legislature attempting to adopt in connection with cash discounts on sales at retail? The answer is clear. None. As the four dissenting Justices below said, "The Act does not authorize discounts for cash in retail sales." What justification is there for this discrimination?

QUESTION THREE

The State of Oklahoma, through judicial interpretation, now permits discounts for the prompt payment of cash in the form of a trading stamp. In so acting, it creates more problems than it solves. There is no fixed value to a trading stamp. Use of stamps can easily destroy the efficacy of the statute. Once permitted, they must then be regulated; otherwise the merchant can give a discount of any value he might choose. The present regulation is piecemeal. "Equal

protection of the laws is not achieved through indiscriminate imposition of inequalities." *Shelley v. Kraemer, op. cit.* The trial court here fixed a limit on the value of trading stamps that appellant might give at 3%. Competitors are not limited to any fixed percentage. "[T]he equal protection of the laws is a pledge of the protection of equal laws." *Yick Wo v. Hopkins, 118 U. S. 356, 369 (1885).* Such protection is wanting here.

> "For if * * * power might be exerted by courts and juries generally to determine the reasonableness of an established rate, it would follow that, unless all courts reached an identical conclusion, a uniform standard of rates in the future would be impossible, as the standard would fluctuate and vary, dependent upon the divergent conclusions reached as to the reasonableness by the various courts called upon to consider the subject as an original question * * *. [T]he existence of such a power in the courts * * * would lead to favoritism, to the enforcement of one rate in one jurisdiction and a different one in another, would destroy the prohibitions against preferences and discriminations, and afford, moreover, a ready means by which, through collusive proceedings, the wrongs which the statute was intended to remedy could be successfully inflicted." *Texas & P. R. Co. v. Abilene Cotton Oil Co., 204 U. S. 426, 440-441 (1906).*

There is no equal protection here; instead, appellant alone is placed under this prohibition. It is inconceivable that every district court in the State could arrive at the 3% figure imposed upon this appellant in the cases which come before them.

The Supreme Court of Oklahoma with benign intent approved the giving of single trading stamps in the usual

manner and the injunction against the double stamps. The pronouncement can have no force. What is a single stamp? Its value has no limitation and the number given with a purchase is variable. To the trade it can only mean that you cannot give twice as much on one day as on another. While appellant is limited to 3%, it is alone in this respect. Its competition can give one stamp with each penny of purchases or with each ten dollars. It can affix a value to its stamps of a thousandth of a cent or a dollar.

Relegated to competition in the arena of trading stamps, each Oklahoma merchant must seek the most attractive stamp. That the pulling power of stamps varies tremendously is unquestionable.

> "One study covered the service stations associated with an oil company in the San Francisco Bay area in early 1956 before stamps were an important factor in grocery retailing. While 36% of this company's associated stations gave stamps, over half gave the only widely distributed stamp, S & H Green Stamps, and the rest gave a variety of others. Stations using S & H stamps were pumping 45% more gasoline than the average for all stations. Those with other stamps were 4% above the total average; and those without stamps ran 15.5% below the total average. Some of the stations with stamps, however, were below average, and some without stamps were above average." *Who Profits From Trading Stamps, op. cit., p. 125.*

The redemption value of the stamp coupled with the extent to which it is known and advertised is the measure of its effectiveness.

The bulk of the trading stamp business is concentrated in a few large companies. Ten of the largest trading stamp companies accounted for about 70 per cent of the business during 1956.[25] When a merchant contracts with one of these large companies his competitors are foreclosed from that stamp. They must find a comparable stamp or initiate their own. It is difficult for the merchant giving his own stamp to compete with stamps which can be secured in grocery stores, drug stores, department stores, laundries and dry cleaners, gasoline stations, hardware stores and practically every type of retail and some service establishments.

The wholly arbitrary and capricious discriminations which permeate this Act are inconsistent with due process and equal protection.

"Discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision." *Louisville Gas & E. Co. v. Coleman, 277 U. S. 32, 37 (1928).* Quoted with approval in *Morey v. Doud, op. cit., p. 464.*

Moreover, violation of this Act is a misdemeanor punishable by a fine. Yet no merchant in Oklahoma can know whether his price is in violation of the Act because the Act affords him no opportunity to determine whether a discount for cash that he might give in connection with a

[25]Trading Stamps and Their Impact on Food Prices, op. cit., p. 2.

sale at retail is within the limits that a court might later fix on the discount. This Court has said:

> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process at law." *Connally v. General Construction Co., 269 U. S. 385 (1926).*

QUESTION FOUR

The Constitution of the United States and the Laws made in pursuance thereof are the Supreme Law of the Land, the laws of any state to the contrary notwithstanding. *Article VI, Clause 2, of the Constitution of the United States.*

Construing this clause, Chief Justice John Marshall stated:

> "The nullity of any act, inconsistent with the constitution is produced by the declaration that the constitution is the supreme law. The appropriate application of that part of the clause which confers the same supremacy on laws and treaties, is to such acts of the state legislatures as do not transcend their powers, but, though enacted in the execution of acknowledged state powers, interfere with, or are contrary to the laws of Congress, made in pursuance of the constitution, or some treaty made under the authority of the United States. In every such case, the act of Congress,

or the treaty, is supreme; and the law of the state, though enacted in the exercise of powers not controverted, must yield to it." *Gibbons v. Ogden, 9 Wheaton 1, 210-211 (1824).* Cf. *Sinnot v. Davenport, 22 Howard 227 (1859).*

This principle has been followed in scores of important decisions through the years. Determination of the relationship of federal and state power within the field of labor regulation has been most active recently. Cf. *Hill v. Florida, 325 U. S. 538 (1945); Garner v. Teamster C & H Union, 346 U. S. 485 (1953); United Construction Workers v. Laburnum Construction Corp., 347 U. S. 656 (1954); Weber v. Anheuser-Busch, 348 U. S. 468 (1955); Guss v. Utah L. R. B., 353 U. S. 1 (1957); International Union, U. A., A. & A. I. W. v. Russell, 356 U. S. 634 (1958).*

The question here is whether the Oklahoma Unfair Sales Act, as applied, "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" in passing the federal antitrust laws. *Hines v. Davidowitz, 312 U. S. 52, 67 (1941).* Can this Act and the federal antitrust laws "move freely within the orbit of their respective purposes without infringing upon one another?" *Union Brokerage Co. v. Jensen, 322 U. S. 202, 207 (1944).*

The Oklahoma Act "* * * so far as it affects interstate commerce even indirectly and incidentally, can have no validity if repugnant to the Federal regulation." *Savage v. Jones, 225 U. S. 501, 529 (1912).*

Illustrative of the application of the rule is *McDermott v. Wisconsin, 228 U. S. 115 (1913)*, which involved the conflict between the federal Food and Drugs Act of 1906 and a Wisconsin statute regulating, among other things, the branding and labeling of syrups and molasses for the protection of the public health. This Court found "the object of the statute is to prevent the misuse of the facilities of interstate commerce in conveying to and placing before the consumer misbranded and adulterated articles of medicine or food * * *." *McDermott v. Wisconsin, op. cit., p. 131.* The Court pointed out that federal authority, for the sake of efficiency in protecting the public against misbranding in interstate trade, extended far enough to regulate labeling on packages while being offered to consumers, and that the federal statute tolerated the more euphemistic label prohibited by the state. The Court went on to say "conceding to the State the authority to make regulations consistent with the Federal law for the further protection of its citizens against impure and misbranded food and drugs, we think to permit such regulation as is embodied in this statute is to permit a state to discredit and burden legitimate Federal regulations of interstate commerce, to destroy rights arising out of the Federal statute which have accrued both to the government and the shipper, and to impair the effect of a Federal law which has been enacted under the Constitutional power of Congress over the subject." *McDermott v. Wisconsin, op. cit., 133-134.*

In *Napier v. Atlantic Coast Line R. Co., 272 U. S. 605 (1926), at p. 613*, Mr. Justice Brandeis, speaking for a unanimous Court, said:

> "Because the standard set by the commission must prevail, requirements by the states are precluded, however commendable or however different their purposes."

This decision enjoined the enforcement of a Georgia statute which prescribed an automatic door to the fire box in locomotives. The Federal Locomotive Boiler Inspection Act prevailed.

"When a federal statute condemns an act as unlawful, the extent and nature of the legal consequences of the condemnation, though left by the statute to judicial determination, are nevertheless federal questions, the answers to which are to be derived from the statute and the federal policy which it has adopted. To the federal statute and policy, conflicting state law and policy must yield." *Sola Electric Co. v. Jefferson Electric Co., 317 U. S. 173, 176 (1942).*

What is the scope and policy of the federal antitrust laws involved? The Sherman Act, *15 U. S. Code, et seq.*, prohibits among other things contracts, combinations, and conspiracies in restraint of trade or commerce, monopolization, attempts to monopolize, and combinations and conspiracies to monopolize any part of interstate trade or commerce. "* * * Congress, in passing the Sherman Act, left no area of the constitutional power unoccupied; it 'exercised all the power it possessed.' *Apex Hosiery Co. v.*

Leader, 310 U. S. 469, 495." United States v. Frankfort Distilleries, Inc., 324 U. S. 293, 298 (1945). "As a charter of freedom, the Act has a generality and adaptability comparable to that found to be desirable in constitutional provisions. It does not go into detailed definitions which might either work injury to legitimate enterprises or through particularization defeat its purposes by providing loopholes for escape." *Appalachian Coals v. United States, 288 U. S. 344, 359-360 (1933).* "The Sherman Act is concerned with more than the large, nation-wide obstacles in the channels of interstate trade. It is designed to sweep away all appreciable obstructions so that the statutory policy of free trade might be effectively achieved." *United States v. Yellow Cab Co., 332 U. S. 218, 226 (1947).*

While it is true that the Sherman Act does not specifically prohibit the states from enacting statutes that effect restraints in trade or monopolization or have such a tendency, the Sherman Act is vitiated by such legislation. State action can be as great a threat to competition as private action. Although Mr. Justice Reed was writing on the conduct of private citizens, the following statement is equally applicable to legislation by a state:

> "* * * it is crystal clear from the legislative history and accepted judicial interpretations of the Sherman Act that competition on prices is the rule of congressional purpose and that where exceptions are made, Congress should make them." *United States v. Line Material Co., 333 U. S. 287, 309-310 (1948).*

In *Schwegmann Bros. v. Calvert Distillers Corp., 341 U. S. 384 (1951),* the Louisiana Fair Trade Act, with

its non-signer clause, was held unenforceable against a retailer who refused to agree to the price-fixing scheme of a manufacturer. The Miller-Tydings Act, an amendment to Section 1 of the Sherman Act, provides "nothing herein contained shall render illegal contracts or agreements prescribing minimum prices for the resale" of specified commodities "when contracts or agreements of that description are lawful as applied to intrastate transactions" under local law. *15 U. S. Code 1.* Schwegmann refused to sign such a contract. Calvert attempted to enjoin Schwegmann from selling Calvert products at less than the minimum prices it established by virtue of the nonsigner clause in the Louisiana Act. The state law was held to conflict with the Sherman Act to the extent that it attempted to legalize the enforcement of price-fixing agreements against nonsigners. It yielded to the superior force of the federal act. See, the McGuire Fair Trade Act, *15 U. S. Code 45.*

The Oklahoma Unfair Sales Act prohibits sales below an arbitrarily determined price in certain cases. This price is the same for nearly all comparable merchants. These merchants are further prohibited from meeting certain lawful competitive prices. These prohibitions are manifestly in conflict with the policy of the Sherman Act.

"It is a familiar doctrine that the prohibition of a federal statute may not be set at naught or its benefits denied by state statutes or state common law rules." *Sola Electric Co. v. Jefferson Electric Co., op. cit., p. 176.* In this case the Court held that a patent licensee is not estopped to challenge a price-fixing clause in his license agreement by

showing that the patent is invalid. It was contended that state law prohibits a party who accepts a license under a patent from denying its validity. Such local rules must yield to the Sherman Act. Agreements fixing competitive sales prices which are not within the protection of a patent are unlawful because prohibited by the Sherman Act. The patent may therefore be challenged.

Clearly within the purpose of the Sherman Act, the question becomes whether the specific conduct involved is within its scope. As to this there can be little doubt. See *Swift & Co. v. United States, 196 U. S. 375 (1905); Binderup v. Pathe Exchange, 263 U. S. 291 (1923); Lorain Journal Co. v. United States, 342 U. S. 143 (1951).* These cases stand for the proposition that once goods enter the stream of commerce they remain a part of the flow until they reach their intended and ultimate destination. The activities of interstate chains, as of all retail grocers, are directed toward the retail sale.

In *United States v. International Boxing Club, 348 U. S. 236 (1955), at p. 241,* this Court stated:

> "A boxing match—like the showing of a motion of a motion picture * * * or the performance of a vaudeville act * * * or the performance of a legitimate state attraction * * *—'is of course a local affair' but that fact alone does not bar application of the Sherman Act to a business based on the promotion of such matches, if the business is itself engaged in interstate commerce * * *."

That the federal antitrust laws have such a direct bearing on the subject matter of the Oklahoma Unfair Sales

Act as to preclude the operation of that Act within the scope of the federal acts, is further illustrated by the Robinson-Patman and Federal Trade Commission Acts. The Robinson-Patman Act in part provides, "It shall be unlawful for any person engaged in commerce in the course of such commerce * * * to sell, or contract to sell, goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor." *15 U. S. Code 13a.* A violation is punishable by fine and imprisonment.

Congress intended to include retail sales by interstate chains within the coverage of this Act. *Senate Resolution 244, 70th Congress*, directed the Federal Trade Commission to make a comprehensive study of chain store operations. The final report of the chain store investigation *(Senate Document No. 4, 74th Congress, 1st Session)* contained a detailed study of the history and operation of the chain stores. In discussing certain unfair methods of competition used by some chains, the report stated:

> "The competitive advantage of chains over single-store competitors, arising from the fact that chains do business in many localities, is most aggressively pursued on those occasions when chains cut their prices locally below the prices of their competitors in that locality, while maintaining prices in their other stores." Page 34.

It is against this background that the statute was enacted.

In *Moore v. Mead's Fine Bread, 348 U. S. 115 (1954)*, Mr. Justice Douglas, speaking for a unanimous Court stated:

> "We have here an interstate industry increasing its domain through outlawed competitive practices. The victim, to be sure, is only a local merchant; and no interstate transactions are used to destroy him. But the beneficiary is an interstate business; the treasury used to finance the warfare is drawn from interstate, as well as local, sources * * * the prices on the interstate sales * * * are kept high while the local prices are lower. If this method of competition were approved, the pattern for growth of monopoly would be simple. As long as the price warfare was strictly intrastate, interstate business could grow and expand with impunity at the expense of local merchants. The competitive advantage would then be with the interstate combines, not by reason of their skills or efficiency but because of their strength and ability to wage price wars. The profits made in interstate activities would underwrite the losses of local price-cutting campaigns * * * Congress, as guardian of the Commerce Clause, certainly has the power to say that those advantages shall not attach to the privilege of doing an interstate business * * *. It is, we think, clear that Congress by the Clayton Act and Robinson-Patman Act barred the use of interstate business to destroy local business outlawing the price-cuting employed by respondent." *Moore v. Mead's Fine Bread, op. cit., pp. 119-120.*

Cf. *Standard Oil Co. v. F. T. C., op. cit.*

It is apparent that both state and federal governments have attempted to regulate the same subject matter; that they are in irreconcilable conflict. The right to meet the

equally low price of a competitor conferred by the federal statute is denied by the state. Many prices below the statutory cost defined in the Oklahoma Act would not be unreasonably low under the Robinson-Patman Act.

The federal acts are rendered lifeless by the state.

The Federal Trade Commission Act outlaws "unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce." *15 U. S. Code 45.* The Commission enforces certain of the federal antitrust laws. Pursuant to the powers delegated it by Congress, the Commission has established extensive trade practice conference rules to effectuate the purposes of the antitrust laws. Included in these rules are prohibitions against wrongful selling below cost. See *Grocery Industry Conference Rules, Section 209.11; 16 C. F. R. 209; 17 F. R. 2357, Effective February 17, 1952.* Because of powers delegated to the Secretary of Agriculture under the Packers and Stockyards Act *(7 U. S. Code 181 et seq.)*, jurisdiction of the Commission over retail sales by grocers packing, processing and handling substantial quantities of meat was limited. See, *15 U. S. Code, 45(a)(6).* The limitation was removed and clear Congressional intent to cover retail sales of grocery chains was shown by amendment to the Packers and Stockyards Act of September 2, 1958:

> "(a) The Federal Trade Commission shall have power and jurisdiction over any matter involving meat, meat food products, livestock products in un-

manufactured form, or poultry products, which by this chapter is made subject to the power or jurisdiction of the Secretary, as follows:

"(2) In any investigation of, or proceeding for the prevention of, an alleged violation of any Act administered by the Commission, arising out of acts or transactions involving meat, meat food products, livestock products in unmanufactured form, or poultry products, if the Commission determines that effective exercise of its power or jurisdiction with respect to retail sales of any such commodities is or will be impaired by the absence of power or jurisdiction over all acts or transactions involving such commodities in such investigation or proceeding." *7 U. S. Code 127.*

It seems apparent that Oklahoma had no jurisdiction over the subject matter of this cause. The facts involved, falling within the sphere of the federal antitrust laws, are subject to the exclusive authority of those laws. The Oklahoma Unfair Sales Act standing as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress must yield.

The permanent injunction appealed from constitutes a continuing interference with the federal antitrust laws and an exercise of judicial power without jurisdiction of the subject matter. In denying appellant rights protected by federal law, the injunction violates due process and equal protection of the laws.

CONCLUSION

For the reasons stated it is respectively submitted that the judgments of the courts below should be reversed and the permanent injunction vacated.

Respectfully submitted,

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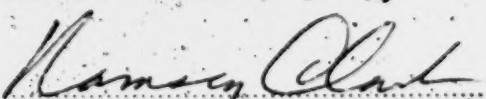

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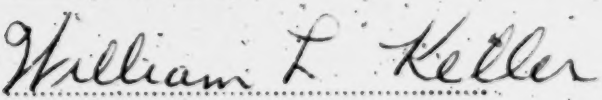

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PROOF OF SERVICE

I, Ramsey Clark, one of the attorneys for Safeway Stores, Incorporated, Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 17th day of March, 1959, I served copies of the foregoing Brief on the Merits on the several parties thereto, as follows:

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 252

SAFEWAY STORES, INCORPORATED,
Appellant,

v.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC. and LOUIE J. SPEED, INC.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

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APPELLEES' BRIEF ON THE MERITS

Statement of the Case.

Safeway's original object was to capture a larger share of the Oklahoma market by cutting prices below cost on certain traffic items. As the second largest grocery chain in the United States, with sales running in excess of one billion, eight hundred million dollars for 1954, Safeway already enjoyed 17½ per cent. of all grocery sales in the State as a whole (R. 252, fol. 554), and as high as 30 per cent. in some of the principal cities (R. 246, fols. 536-537). Still it was not satisfied (R. 250, fols. 549-550). It was not enough that Safeway's gross was continually increasing (R. 253, fol. 557). In Oklahoma City, where there

were about 400 grocery stores of all types, Safeway's 16 supermarkets accounted for 17 per cent. of the business (R. 282, fol. 612). Not content, Safeway set for itself a quota of 20 per cent. (R. 250, fol. 550).

Safeway contended that it was entitled to sell below cost because, among its thousands of competitors, one or more in each locality was actually selling the same items below cost either directly or by giving trading stamps on cash purchases (R. 200, fols. 449-450); and all that Safeway intended was to meet those prices defensively (R. 218, fols. 484-485).

The trial court having found that Safeway was not acting "in good faith to meet the price of a competitor" as permitted by the Act (Sec. 598.7) but, on the contrary, "Safeway, without legal justification, wilfully and intentionally reduced its prices in an effort to increase its volume, to the detriment of other grocers" (R. 447, fol. 943), and the Oklahoma Supreme Court having affirmed on the basis of these facts, Safeway shifts its tactics. Unable any longer to contend that it did not violate the Act, Safeway now contends that the Act, as applied, is unconstitutional.

The original object of the Oklahoma Retail Grocers Association in this lawsuit was to head off a price war in the grocery business by enjoining Safeway from selling below cost. Having succeeded in this, its present object is to sustain the validity of the Oklahoma Unfair Sales Act as the bulwark of the independent grocer against the great chains. There are some 1700 members of the Association (R. 98, fol. 195) and they represent about 30 per cent. of all grocery sales in the State (R. 479, fol. 1029). It was the Grocers Association which originally sponsored the Oklahoma Unfair Sales Act in 1949 (R. 110, fol. 225); backed its amendment after the Oklahoma Supreme Court invalidated it in *Englebrecht* v. *Day*, 201 Okl. 585; 209 P.

2d 538 (1950); and secured its subsequent approval in *Adwon* v. *Oklahoma Retail Grocers Association, Inc.*, 204 Okl. 199; 228 P. 2d 376 (1951).

The Oklahoma Unfair Sales Act, in the interest of preserving competition, prohibits sales below cost where the intent and result is to injure competition. It is not a price fixing statute but merely outlaws "loss leader" merchandising.

Broadly speaking, the Act defines cost as invoice or replacement cost, whichever is the lower, plus freight, plus cartage, plus 6 per cent. for overhead in the absence of proof of a lower cost of doing business (Sec. 598.2); and it prohibits sales when made below cost with the intent and purpose of injuring competition, where the result would tend to deceive any purchaser or to create a monopoly (Sec. 598.3).

In the highly competitive retail grocery field a substantial number of so-called traffic items such as canned milk, sugar, coffee, tea, flour, shortening, soaps and detergents are sold at, or very close to, statutory cost (R. 480, fol. 1030).

On July 21, 1954, Safeway broke with an advertisement in the "Daily Oklahoman" (R. 106, fols. 212-213; Ex. "D", R. 466) declaring that it would sell certain traffic items at prices which, it subsequently admitted, were below cost (R. 200, fols. 449-450). The excuse that Safeway offered for this was that, out of a total of 400 grocery stores in the Oklahoma City area (R. 282, fol. 612), eight or nine were selling the same items at cost and issuing trading stamps (R. 281, fol. 611). Safeway contended that the effect of giving trading stamps was to cut the price (R. 220-221, fols. 489-492); and that all Safeway was doing in cutting its prices on selected traffic items was meeting the trading stamp prices (R. 218, fols. 484-485).

There was nothing new about trading stamps. They had been given in Oklahoma as early as 1911 (R. 132, fol. 277), years before the enactment of the Oklahoma Unfair Sales Act. The Sperry and Hutchinson Company had been engaged in the trading stamp business across the nation for over 60 years and in Oklahoma for 45 years (R. 373, fol. 799). Whereas a price cut below the statutory minimum would trigger a price war, trading stamps had never done so (R. 262, fol. 575). On the contrary, they had been considered the means of promoting sales through the allowance of a discount for the payment of cash (R. 78, fol. 144) which, by its very definition, does not affect price (R. 414, fol. 874). They were recognized as something extra (R. 353, fols. 756-757) but neither the grocers nor their customers (R. 361, fol. 774) looked upon them as something which cut prices (R. 131, fol. 275; R. 347, fols. 743-744); and the Attorney General of Oklahoma had specifically ruled that they did not. In an opinion dated May 8, 1950, he had said,

> "Thus the weight of law, logic and reason, as declared by decisions of various courts, holds clearly and distinctly to the view that the practice of giving trading stamps does not amount to, nor will it sustain a charge of, price cutting." (R. 624, fol. 1173)

Perfectly aware of the Attorney General's opinion (R. 623, 626, fols. 1173-1175), and aware, also, that, if trading stamps did in fact cut prices below statutory cost, they could be enjoined (R. 238, fol. 521; Sec. 598.5 (a)), Safeway deliberately cut its prices on selected traffic items by what it took to be the value of trading stamps, notwithstanding that this resulted in sales below the statutory minimum.

The reaction of the Grocers Association was immediate; it filed suit in the District Court of Oklahoma County

under Sec. 598.10 to enjoin Safeway's sales below cost (R. 467-473, fols. 1011-1019); secured a restraining order (R. 474-475, fols. 1020-1023); and obtained a temporary injunction (R. 477, fol. 1025). Having made its point, the Grocers Association thereupon dismissed the action without prejudice (R. 476, fol. 1024); issued a public statement (R. 110, fol. 221); and hoped for peace in the grocery industry. This wound up the first action on August 31, 1954 (R. 476, fol. 1025).

Two weeks later, or, to be more precise, on September 15, 1954, Safeway struck again with another advertisement in the Oklahoma City papers in which it offered an even larger assortment of traffic items below statutory cost, purportedly to offset the value of trading stamps (Exs. "C-1" to "C-14"; R. 460-465, fols. 1005-1009). As a matter of fact, Safeway cut even deeper when it could find an excuse (see for example, Ex. "H", R. 551, fol. 1102). And this time, it carried its attack to other parts of the State (Enid, Norman, Shawnee and Tulsa), with advertisements hammering selected traffic items below cost (Exs. "C-1" to "C-14"), not upon the ground that it was meeting trading stamp competition (R. 253, fols. 557 and 558; R. 260, fol. 571), but upon the ground that one or more of its competitors were selling like items as loss leaders at these prices (R. 163, fol. 349).

Other chains followed suit (R. 121, fol. 252; R. 268, fol. 585); and, if something had not been done, there would have been a price war (R. 122, fol. 254). Safeway was prepared to meet prices, cut for cut, indefinitely, without regard to the statutory minimum, even if it resulted in a vicious price war (R. 269-270, fols. 586-588). Nothing short of an injunction would have stopped Safeway (R. 269, fol. 586). And so, in response to inquiries and complaints from its membership (R. 103, fol. 203; R. 122, fol. 255), the Grocers Association jumped in again

and brought the price cuts to a halt with a temporary restraining order (R. 50-51, fols. 50-52). In the opinion of one of the principal officers of the Association, this was "the salvation of the independent retailers" (R. 121, fol. 248). If it had not been done, the smaller independents would have been driven out of business (R. 122-123, fols. 255-259).

This time no truce was offered at the temporary injunction stage: the complaint against Safeway was tried and won on the merits. At the same time, Safeway's cross-complaint against Louie J. Speed, Inc. for giving trading stamps with groceries sold at statutory cost was defeated on the merits. The stamps were worth 2.5 per cent. of the price paid (R. 438, fol. 930).

Only two issues of any importance were presented. Safeway lost on both of them.

The first issue was whether Safeway acted in good faith when it sold below cost allegedly to meet competition. Mr. Christensen, Safeway's Division Manager for Oklahoma and Arkansas (R. 206, fols. 458-459), who made the decision to cut the prices (R. 220, fols. 489-490), protested that he only intended in good faith to meet his competitors' prices (R. 218, fols. 484-485; R. 230, fol. 506). On the evidence, the trial court did not believe him. It found that Safeway acted in bad faith; that its purpose was not to meet competition but to divert trade; and that one illegal price did not justify another, saying:

> "Safeway, without legal justification, wilfully and intentionally reduced its prices in an effort to increase its volume, to the detriment of the other grocers." (R. 447, fol. 943)

> "[O]ne violation of the law will not justify another * * *." (R. 441, fol. 934)

Intent is always difficult to establish (R. 443, fols. 937-938), and that is why such a statute as the Oklahoma Unfair Sales Act provides that "Evidence of advertisement, offering to sell, or sale of merchandise by any retailer or wholesaler at less than cost to him, shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition" (Sec. 598.5(c)).

The good intentions professed by Safeway's Mr. Christensen were overwhelmed by evidence to the contrary:

1. When Safeway cut its prices the first time on the alleged excuse that some of its competitors were cutting prices by issuing trading stamps, Mr. Christensen knew that the Attorney General of Oklahoma had ruled that trading stamps did not cut price (R. 623-624; fols. 1172-1173).

2. When Safeway cut its prices the second time, it had just been through two days of hearings and half a day of argument on the law in an unsuccessful attempt to persuade the District Court not to enjoin it from cutting prices below cost in asserted opposition to trading stamps (R. 240, fols. 525-526; R. 477, fols. 1025-1026).

3. On both occasions Safeway was aware that, instead of attacking in the market place at the risk of setting off a price war, it could have applied for an injunction (R. 238, fol. 521; R. 280, fol. 607). This was the method provided by the statute (Sec. 598.5(a)); it was the method which the Grocers Association adopted; and it was the method which the District Court in both actions indicated that Safeway should have followed* (R. 442-443, fols. 935-937).

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* Safeway's excuse for not following the orderly course provided by the statute was that, as a matter of Company policy, it never sued a competitor (R. 243, fol. 530). To await suit instead of bringing it is not as praiseworthy as might be supposed. The news that "Safeway has been sued again for selling too low" is wonderful publicity.

4. To exploit what it claims were the lower prices of a handful of competitors, Safeway was willing to trigger a price war (R. 262, fol. 575) which would have demoralized the entire industry.

5. Mr. Christensen, Safeway's chief administrative officer and the man who directed the warfare, never took the trouble even to read the Oklahoma Unfair Sales Act (R. 236, fol. 518).

6. Whether the prices which Safeway claimed to be meeting were legal or illegal was a matter of indifference to Mr. Christensen (R. 239, fol. 523); he was prepared to meet them, cut for cut, *ad infinitum* and even if this should result in a vicious price war (R. 269-270, fols. 586-588).

7. Safeway must have known, when it advertised for 23 cents what everyone else was advertising for 25 cents (R. 357, fol. 764), and for 95 cents what others were advertising for $1.00 (Ex. "H", R. 551, fol. 1102), the housewife would conclude that Safeway's prices were lower, even though some of the other merchants also gave trading stamps (R. 361, fol. 774; R. 446, fols. 941-943).

8. Safeway must also have known that to advertise price cuts on selected traffic items would lead the housewife to believe, contrary to the fact, that Safeway's prices were cheaper across the board (R. 357-358, fols. 764-765) and would therefore divert trade to Safeway.

It is foolish to suggest that Safeway did not know and did not intend the natural consequences of its acts. Safeway's conduct points to only one conclusion: Safeway could have gone the injunction route if it had been really disturbed by what it claimed to be below-cost sales, but what Safeway wanted was not to enjoin the loss leadering

but to exploit it in the guise of meeting competition.* Safeway wanted to take advantage of every violation, real or fancied, to grab for itself a greater share of the market at the expense of every independent grocer in Oklahoma City, Enid, Norman, Shawnee and Tulsa. Safeway knew that if it enjoined its competitors, it would derive no competitive advantage, but if it matched one loss leader with another, and sold for 95 cents what the stamp merchant sold for $1.00 it would get the business; and the trial court so found (R. 446, fols. 941-942).

To have condoned such a course, as the trial court pointed out, would have invited chaos and accomplished the ruin of hundreds, if not thousands, of small independent merchants (R. 442, fol. 936).

The second issue was whether the issuance of trading stamps by Louie J. Speed, Inc. with merchandise sold at statutory cost had the effect of reducing the price and hence violating the Act. These were S&H Green Stamps issued at the rate of one for every ten cents paid in cash or within a normal discount period.** Speed sold for cash and on credit (R. 155, fol. 325). When a customer bought on credit, there was a 2 per cent. charge (R. 158, fol. 330) and he was not given stamps unless he paid his bill by the 10th of the following month (R. 194, fol. 429). When a customer accumulated a full book of 1200 stamps by making purchases amounting to $120 he could secure from The Sperry and Hutchinson Company an item of redemption merchandise worth $3.00 at retail (R. 137-138, fols. 288-290). The discount for cash, therefore, amounted to 2.5 per cent.

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* If a mama and poppa store sold chicken below cost, Safeway wanted to "meet" that competition in all 16 of its supermarkets in Oklahoma City.

** See S&H Contracts, R. 80-88.

Safeway called an economist from Southern Methodist University who testified that, in his opinion, trading stamps were not the means of affording a discount for cash (R. 305, fol. 655) but were things bought and sold like cans of tomatoes (R. 305, fol. 656) and so resulted in tied sales; that the expense to the merchant should not be included in his cost of doing business, either as a financial or a promotional expense but only as part of the cost of his merchandise (R. 311, fol. 667); and that, no matter how stamps might be classified, discounts for the payment of cash had the effect of reducing prices (R. 304, fols. 653-654).

The Grocers Association called an eminent accountant who testified that, in his opinion, trading stamps were one means of affording a discount for the payment of cash; that their issuance did not result in tied sales (R. 394-395, fols. 832-834); that their expense was properly included in financial and promotional costs rather than inventory (R. 420, fol. 886); and that, by definition, discounts for the payment of cash do not reduce prices (R. 414, fol. 814), but relate to the terms of sale (R. 392-393, fols. 828-830*; R. 394, fol. 832).

The Oklahoma Courts resolved this conflict in favor of the view of the expert called by the Grocers Association and against the view of the expert called by Safeway, thus supporting the 1950 opinion of the Attorney General of Oklahoma which Safeway had faced from the outset.

On the facts presented, the trial court found (1) that Safeway sold certain selected traffic items below statutory

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* In this connection it should be noted that the transcript is garbled. Record page 393 lines 4 and 5 should read,

"Q. Did you hear Doctor Johnson expound the theory that *cash* discounts, like trade discounts, reduce the price?"

and lines 30 and 31 should read,

"And the purpose of the discount for cash is to affect the terms of Sale."

cost (R. 450, fols. 949-950); (2) that, although this was allegedly to offset in good faith the value of trading stamps issued by certain merchants in Oklahoma City, actually it was not in good faith and was without legal justification (R. 450, fol. 950); (3) that, similarly, the sales which were made in Tulsa, Enid, Shawnee and Norman below cost were not made in good faith but were made to meet prices which Safeway knew or had reason to know were illegal and therefore furnished no justification (R. 450-451, fols. 950-951); (4) that Safeway's real intent and purpose was unfairly to divert trade from its competitors in violation of the Oklahoma Unfair Sales Act (R. 451, fols. 951-952); (5) that Speed, by selling merchandise at cost and issuing trading stamps therewith as a discount for the prompt payment of cash did not violate the Act (R. 451, fol. 952); and (6) that issuing trading stamps having a value not in excess of 3 per cent. of the purchase price constitutes a discount for cash which does not reduce the price in violation of the Act (R. 451, fol. 953). Accordingly, the temporary injunction against Safeway's sales below cost in violation of the Act and its issuance of trading stamps, cash register receipts or other evidences of credit as a discount for the payment of cash, of a value in excess of 3 per cent., was made permanent (R. 452, fol. 953). At the same time, the Court refused to enjoin Speed from issuing single stamps so long as their value did not exceed 3 per cent. of the purchase price (R. 452-453, fol. 954).

SUMMARY OF ARGUMENT

POINT I

The State Court decision rests on an adequate non-federal basis. The only issues presented to the Oklahoma Court were (1) whether Safeway could meet its competitors' prices even if they were illegal; and (2) whether trading stamps cut price. Both issues were decided by analysis of the intent and language of the Act, evaluation of the testimony at the trial and consideration of the decisions of sister states. No resort was made to federal principles.

POINT II

Safeway bases its Due Process Clause argument on the existence of a hypothetical class of sales by its competitors that are below cost yet not in violation of the Act. In practice it is doubtful if such a class exists. It is certain that no such case was presented in the courts below. Moreover, even were the Act construed to prohibit meeting all prices below one's competitor's cost there would be nothing arbitrary in such a provision in an anti-loss-leader statute. The day is gone when this Court uses the Due Process Clause to strike down state laws; regulatory of business because they may be out of harmony with a particular school of thought.

POINT III

Safeway claims it has the right to cut prices below the statutory minimum in order to meet the competition of grocers selling at the statutory minimum and giving cash discounts in trading stamps. Based on the testimony

of the grocers and the experts who drew a sharp distinction between the practical and theoretical market effects of trading stamps on the one hand and loss leaders on the other, the Oklahoma Courts were justified in permitting stamps not in excess of 3 per cent. as cash discounts and prohibiting Safeway's price cuts. The differences in the practices warranted a difference in their treatment. The Court's decision involved no invidious discrimination.

POINT IV

Having raised the issue whether trading stamps cut prices in violation of the Oklahoma Unfair Sales Act, Safeway has no cause to complain because the Oklahoma Courts decided that issue. The Court's decision enjoined Speed as well as Safeway. Its judgment is *res adjudicata* as to all 1700 members of the Grocers Association.

POINT V

Safeway's claim that the federal antitrust laws preempt the field in which the Oklahoma Unfair Sales Act operates comes too late when the first assertion of preemption is made in the brief submitted to this Court on the merits. No such question may properly come before this Court unless it has been previously submitted to the State courts and preserved in the Notice of Appeal and the Jurisdictional Statement. Even if the question were properly before this Court, there is no basis for the claim that the federal antitrust laws preempt this area.

POINT I

Jurisdiction was improvidently noted. The State Court decision rests on adequate non-federal grounds.

This Court has consistently adhered to the self-imposed principle that it will not review a state court judgment based on an adequate and independent non-federal ground, even though a federal question was argued and decided improperly. *Murdock* v. *City of Memphis*, 20 Wall. 590, 636 (1874); *Berea College* v. *Kentucky*, 211 U. S. 45, 53 (1908). Even where the judgment of the state court concededly rests upon two grounds, one of which is federal and the other non-federal in character, this Court's jurisdiction fails if the non-federal ground is "independent of the federal ground and adequate to support the judgment." *Fox Film Corp.* v. *Muller*, 296 U. S. 207, 210 (1935) and the cases cited therein.

The issues presented to the Oklahoma Courts were (1) the procedural question of whether Safeway had the right to ignore the injunctive relief offered it by the Oklahoma Unfair Sales Act in favor of self help in the market place where such self help involved meeting an illegal price with an illegal price; and (2) whether trading stamps not in excess of 3 per cent. were a bona fide discount for cash that did not cut prices in violation of the Act.

The Oklahoma Supreme Court was concerned "only in the interpretation and application of Oklahoma's Unfair Sales Act as applied to the particular facts in this case * * * so as to give it practical meaning and effect within the legislative intent" (R. 635, fol. 1187).

Its decision was based on the factual finding that Safeway had not acted in good faith to meet competition, but rather that "Safeway, without legal justification, wilfully and intentionally reduced its prices in an effort to in-

crease its volume, to the detriment of other grocers." (R. 447, fol. 943). On this state of facts the Oklahoma Supreme Court said:

> We are of the opinion that this injunction granted by the trial court against Safeway was proper, because under our statute the appropriate remedy was by injunction and not by retaliation or retaliatory action, such as was practiced by Safeway. In this respect the judgment of the trial court is affirmed (R. 637, fol. 1190).

With respect to the second issue, the Oklahoma Courts found that the stamps were a bona fide cash discount and did not cut prices in violation of the Act. That decision was based exclusively on an analysis of the Oklahoma Unfair Sales Act, the testimony of the grocers and the experts heard at the trial, and on decisions from sister states. That issue presented no federal question and was decided as a matter of local law.

The judgment of the Oklahoma Supreme Court being based upon adequate non-federal ground Appellee respectfully submits that probable jurisdiction was improvidently noted and the appeal should be dismissed.

POINT II

Safeway bases its due process challenge on a hypothetical case never presented to the Courts below.

> "We do not go beyond the circumstances of the case. Generalizations are treacherous in the application of large constitutional concepts." *Hughes* v. *Superior Court*, 339 U. S. 460, 469 (1949)

The case that the Oklahoma Courts decided was the case presented on the evidence, and no other. Thus the Oklahoma Supreme Court said:

> "We are concerned herein only in the interpretation and application of Oklahoma's Unfair Sales Act as applied to the particular facts in this case. * * * [T]his Court will refrain from theorizing." (R. 635, fol. 1187)

The case presented was one in which Safeway contended that all it did was to meet in good faith its competitors' prices and that meeting competition was no violation of the Act because merely to meet a competitor's price would not sustain a charge of wrongful intent nor would it tend to injure competition. Safeway lost on these factual issues: the courts found that Safeway was acting in bad faith, that what it was actually doing was cutting prices below cost with the intent of injuring competition, and that this tended unfairly to divert trade in violation of the Act.

The case presented was one in which Safeway contended that it could meet its competitors' prices even if they were illegal.

> Q. All right; now what was your policy,—was it your policy to meet any price of a competitor, regardless of whether it was legal or not? A. It was our policy to meet the price.
>
> Q. Regardless, is that right? A. Regardless, yes, sir. (R. 239, fol. 523)

Safeway recognizes that the record amply sustains the findings which the Oklahoma Courts made against it, and that, therefore, in this Court it can no longer make an argument on the facts.*

Safeway recognizes further that it would be fruitless for it to renew in this Court its plea that it was entitled

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* "[T]he theory that in a federal system the state court is the proper forum to settle issues of fact is the basic consideration that has led the Court to give considerable deference to state court findings." Note, 55 Harv. L. Rev. 644, 646 (1942) and the cases cited therein.

to match one illegal price with another, a course which would in one fell blow accomplish the destruction of the statutory controls and the demoralization of the grocery market. (Cf. decisions *re* meeting competition under Robinson-Patman. *F. T. C.* v. *Standard Oil Company*, 355 U. S. 396 [1958]; *Standard Oil Company* v. *F. T. C.*, 340 U. S. 231 [1951]; *F. T. C.* v. *Staley Manufacturing Co.*, 324 U. S. 746 [1945].)

Accordingly, Safeway now contends that there is something unique about the Oklahoma Act that makes it unconstitutional.

> "The Oklahoma Act is the only one of thirty such statutes that prohibits meeting all prices below statutory cost, whether lawful or unlawful.
>
> "The Oklahoma Courts have been confused by this meeting competition defense because it is the only one of its kind." (Appellant's Br. p. 14)

In the Oklahoma Supreme Court, Safeway faced in precisely the opposite direction, saying:

> "We do not agree with the implication in the majority opinion that there is anything unique about the Oklahoma Act, as it was carefully patterned after those of other states where the legislation had been held constitutional. (*Adwon* v. *Oklahoma Retail Grocers Association*)." (R. 665, fol. 1224)

The argument that Safeway offers to support this about-face is that the injunction under the Act in the present case does not permit Safeway to meet its competitor's price in every case, but only when its competitor is selling at or above his cost. Safeway suggests under its interpretation of the injunction that cases can be imagined in which sales below cost would be perfectly legal because

of the inoffensive motives which prompted them, and that, in such cases, Safeway would find itself unable to enjoin the sales because they would be entirely lawful, and equally unable to meet the prices because, by hypothesis, they would not be at or above the seller's costs.

Our own view is that the injunction should be interpreted in the light of the issues actually litigated and the decision actually made by the Oklahoma Courts, and, as we have said, no such issue was litigated or adjudicated.

The injunction does no more than adopt the language of the statute itself.

What the Act says is that

> "* * * to sell * * * at less than cost * * * with the intent and purpose of * * * injuring a competitor * * * [is] * * * unfair competition and contrary to public policy * * * where the result * * * is to tend to deceive * * * or to substantially lessen competition * * * or to tend to create a monopoly in any line of commerce." (Sec. 598.3)

What the injunction says is that

> "Safeway Stores, Inc. * * * [its] agents, servants, clerks, and employees * * * are * * * enjoined and restrained from advertising for sale, offering for sale, and selling, at retail * * * within the State of Oklahoma, at prices which are less than cost to the retailer * * * and in violation of the provisions of said Oklahoma 'Unfair Sales Act', * * * ." (R. 452, fol. 953)

That is to say, with wrongful intent and effect.

The Act goes on to provide a specific exemption which permits

> "Any retailer * * * to sell * * * at a price made in good faith to meet the price of a competitor who is selling the same article or products of comparable quality at cost to him as a * * * retailer." (Sec. 598.7)

So, too, does the injunction go on to provide that Safeway may

> "* * * meet in good faith the prices of competitors who are selling the same articles or products of comparable quality at cost to them as retailers." (R. 452, fol. 953)

Since the injunction merely adopts the language of the Act, there is no basis for a claim that the Court intended to go farther in the injunction than the legislature intended to go in the Act. The question resolves itself, therefore, into whether the Act, as it stands, would prohibit Safeway in good faith to meet the lawful below-cost prices of its competitors.

In the Court below, Safeway itself answered this question in the negative. Here again it finds itself obliged to reverse its position.

In the Oklahoma Supreme Court Safeway contended that, by specifically permitting a retailer in good faith to meet the price of a competitor selling at cost to him, the legislature merely indicated one of several affirmative defenses that might be pleaded, and did not intend to foreclose the introduction of others. Thus, in its brief in support of its Petition for Rehearing, Safeway said, referring to *People* v. *Pay Less Drug Store,* 25 Cal. 2d 108, 153 P. 2d 9 (1944).

> "The *Pay Less* case was appealed to the Supreme Court where defendant argued that the Legislature had attempted to make the exception of meeting legal prices of competitors exclusive and the Act was, therefore, unconstitutional. In 153 P. 2d 9, at page 12, the Court carefully points out that it is not an exclusive defense but that defendant may show that its price reductions were made because of business necessity and not to injure competitors.
>
> 'The obvious and only effect of this provision is to require the defendants to go forward with such

> proof as would bring them within one of the exceptions or which would negative the prima facie showing of wrongful intent. They may present facts showing that they were within the *express exceptions regardless of actual intent; or they may introduce evidence of another necessity not expressly included to show that sales were made in good faith and not for the purpose of injuring competitors or destroying competition.*' (Italics ours)" (R. 664, fol. 1223).

So construed, there is nothing in the law and, hence, nothing in the injunction which would prevent Safeway from selling below cost to meet the lawful below-cost price of a competitor if the necessity arises in the future and if, at that time, Safeway acts in good faith. Actual disposition of the question will have to await a case which will present it for adjudication.

Even if the statute should in fact prohibit Safeway from meeting the lawful below-cost prices of its competitors, there would be in this no denial of equal protection or due process.

Obviously, if Safeway cannot meet the lawful below-cost prices of its competitors, neither can its competitors meet the lawful below-cost prices of Safeway. By the same token, neither can enjoin the lawful below-cost sales of the other. *Lincoln Union* v. *Northwestern Co.*, 335 U. S. 525, 532, 537 (1949).

The purpose of this Act, like all other Unfair Sales Acts is to prevent the lessening of competition and to curb the tendency toward monopoly in any line of commerce by outlawing loss leader merchandising. Within the context of this Court's previous decisions it cannot be said that the statute is not reasonably designed to meet that problem. Even if some inequalities under the statute could be found, as Safeway seems to suggest, an

inability to meet competitors' prices in every instance would not and should not destroy the Act. Legislation in the field of economic regulation need not be drawn with such mastery that every conceivable situation will fall within its embrace.

As this Court said in *Central Lumber Co.* v. *South Dakota*, 226 U. S. 157, 160 (1912):

> "If the legislature shares the now prevailing belief as to what is public policy and finds that a particular instrument of trade war is being used against that policy in certain cases, it may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses, and it may do so none the less that the forbidden act does not differ in kind from those that are allowed."

See also cases collected in *Hughes* v. *Superior Court*, *supra*, 339 U. S. at 468-469.

The possible existence of variations from the statutory scheme will not support the argument that the statute is arbitrary or discriminatory or that, as drawn, it is irrelevant to the policy the legislature had in mind in its enactment. *Nebbia* v. *New York*, 291 U. S. 502, 539 (1933).

More recently in *Williamson* v. *Lee Optical Company*, 348 U. S. 483, 487-488 (1954), the Court said:

> "• • • [T]he law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it.
>
> "The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise,

> improvident, or out of harmony with a particular school of thought. See *Nebbia* v. *New York*, 291 U. S. 502; *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379; *Olsen* v. *Nebraska*, 313 U. S. 236; *Lincoln Union* v. *Northwestern Co.*, 335 U. S. 525; *Daniel* v. *Family Ins. Co.*, 336 U. S. 220; *Day-Brite Lighting, Inc.* v. *Missouri*, 342 U. S. 421. We emphasize again what Chief Justice Waite said in *Munn* v. *Illinois*, 94 U. S. 113, 134, 'For protection against abuses by legislatures the people must resort to the polls, not to the courts.'"

The hypothetical cases which Safeway now posits under its interpretation of the injunction have not been shown to exist, and the likelihood that they may arise in some future litigation seems remote.

The statute itself provides that "Evidence of advertisement, offering to sell, or sale of merchandise by any retailer * * * at less than cost to him, shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition." (Sec. 598.5[c].) The record in this case leaves no doubt that to sell groceries below cost diverts trade. And there is a well-settled maxim in the law that a man must be held to intend the natural consequences of his acts.

But, in any case, it is certain that there is no such class to be found in this record. Prima facie, all sales below cost in this case were made with intent to injure competitors and to destroy or substantially lessen competition. No evidence was offered to rebut the prima facie evidence of wrongful intent, and, no matter what Safeway may now say, it is nearly inconceivable that a grocer could successfully contend that in selling milk at five cents a quart, he was not violating the Act, because his sole intent was the wholly innocent one of making friends and that he had no intention of unfairly diverting these "friends" from his competitors. The hypothesis that

grocers may innocently engage in loss leadering belies the practicalities with which the legislature and the courts are concerned.

> "Respondents pose hypothetical situations which they say may rise up to plague them. However, 'we think it would not be good judicial administration,' as our late Brother Jackson said in *International Salt Co.* v. *United States*, 332 U. S. 392, 401 (1947), to strike the contested paragraph of the order to meet such conjectures. The Commission has reserved jurisdiction to meet just such contingencies.' As actual situations arise they can be presented to the Commission in evidentiary form rather than as fantasies." *F. T. C.* v. *National Lead Co.*, 352 U. S. 419, 431 (1957)

Safeway itself concedes that this issue, which is the subject of its first point and the key to its second, is "elusive" and suggests that its "elusory nature" is inherent in the way the statute was drafted. (Appellant's Br. p. 17) It might better have been described as "illusory": the Oklahoma Courts never had such a case before them and never undertook to decide it. When such a case is presented, they will decide it, but as the Oklahoma Supreme Court said, "Until a proper factual case is presented which requires a clear determination and offers a practical situation in which all the conflicting problems and considerations of the Act involved are apparent, this Court will refrain from theorizing." The Court immediately went on to say, "This is particularly true in cases involving the field of economic regulation." (R. 635, fol. 1187) This Court more than once has said as much. *F. T. C.* v. *National Lead Co.*, *supra*; *Hughes* v. *Superior Court*, *supra*; *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 411 (1905).

How the hypothetical situations advanced in Safeway's argument will be met by the Oklahoma Courts must await the development of litigation which will present them to the courts for decision. They do not arise on the facts presented here.

POINT III

To sell selected traffic items as loss leaders is not the same as to give trading stamps across the board.

> "The more complicated society becomes, the greater the diversity of its problems and the more does legislation direct itself to the diversities. Statutes, that is, are directed to less than universal situations. Law reflects distinctions that exist in fact or at least appear to exist in the judgment of legislators—those who have the responsibility for making law fit fact. Legislation is essentially empiric. It addresses itself to the more or less crude outside world and not to the neat, logical models of the mind. Classification is inherent in legislation; the Equal Protection Clause has not forbidden it. To recognize marked differences that exist in fact is living law; to disregard practical differences and concentrate on some abstract identities is lifeless logic." *Morey* v. *Doud*, 354 U. S. 457, 472 (1957). dissenting opinion of Mr. Justice Frankfurter.

The question presented is whether the Oklahoma Courts denied Safeway the equal protection of the laws when they construed the Oklahoma Unfair Sales Act to permit grocers to continue to issue trading stamps across the board, and denied Safeway the right to cut prices below cost, to the value of the trading stamps, on selected traffic items. We think they did not. There is a clear distinction between the two practices that justifies a difference of treatment.

At the outset, it should be remembered that trading stamps have been given for over sixty years. Safeway claims, and we do not doubt, that, today, half the families of America save them (Appellant's Br. p. 38). It should also be noted that trading stamps are given on the dollars paid, not on the items purchased. It makes no difference what is in the market basket. There can be any one of an almost infinite number of combinations of individual items the total cost of which may be $1.00—some, all, or none may be traffic items sold at cost. But no matter what the actual combination may be, the number of stamps is always ten for every dollar paid in cash. The Court should also bear in mind that the full $1.00 is charged, paid and rung up on the cash register. Finally, the prices advertised are the shelf prices actually paid, not prices arrived at by deducting the value of the stamps.

It is one thing to advertise a broad variety of groceries, some of which may be traffic items sold at cost, and say: "We give S&H Green Stamps." It is quite another thing to advertise selected traffic items at prices below the statutory minimum and say: "The prices on many of the items in this ad have been lowered sufficiently to offset the value of trading stamps." (R. 463, fol. 1007)

Mr. Kamp, who had been in the grocery business since 1910 (R. 118, fols. 243-244) and had been the treasurer of the state and county grocers' associations since their inception (R. 118-119, fols. 244-245), said, when called as a witness for Safeway, that stamps had never been considered price cuts in the grocery trade and that he did not so consider them.

> "A. Why I wouldn't call it a reduction in price if anybody gives stamps because these folks that have given stamps have been giving them so long

> that they get used to them. It is whatever they want to call it, but I don't call it a reduction in price." (R. 131, fol. 275)

Mr. Morrison, President of the Grocers Association at the time the instant suit was commenced, (R. 344, fol. 736), added that he did not believe the consumer looked upon trading stamps as price cuts, saying:

> "A. Well, I don't think the consumer,—I mean your hypothetical case of the consumer coming in and buying sugar identifies this,—I don't think she looks at it that way at all. She thought she was paying a dollar for that sugar." (R. 361, fol. 774)

In other words, when the grocer sold sugar for $1.00 and gave ten stamps worth 2½ per cent., neither he nor his customer were under the impression that the sugar had been sold for 97½ cents.

This has been going on for years without weakening the price structure of the industry or creating the impression that anyone was indulging in loss leader merchandising, but the instant that one of the grocers (Safeway) advertised that it was selling sugar at 97 cents to offset the value of trading stamps, other chains followed suit and the war was on. In abstract theory one might argue that there was little difference in the end result to the consumer purchasing the sugar, but the impact upon the market, as the trial court recognized, was quite different:

> "You see, here is what we have, gentlemen,—Speed advertises some merchandise for, say $1.00; the defendant, Safeway, advertises [fol. 942] it for, lets say, 97 cents, or 98 cents, and stands on the theory that they are meeting the green stamp competition. That appears in the public press,—in the newspapers; it appears on the shelf. The only thing that the purchaser sees is that the article is priced at 98

> cents; he doesn't give any further thought to the trading stamp,—he just sees that the other man has it two cents cheaper." (R. 446, fols. 941-942)

The argument which Safeway made in the Oklahoma Court, namely, that to cut prices on selected traffic items is the same thing as to issue trading stamps across the board, does not, therefore, stand up. To bolster its position Safeway now urges for the first time in this Court that there is a theoretical identity between the two practices. Its new argument is that, if trading stamps constitutes a discount for cash, so does price cutting on selected items. In other words, Safeway now contends that all it was doing was to match the cash discount which its trading stamp competitors gave in stamps with a discount of its own given by netting the cash price; and goes on to say that, since the Oklahoma Courts did not allow this, the effect is to permit discounts for cash to be given in stamps but not in cash.

This is nonsense. Safeway never even pretended that its price cuts on selected traffic items were intended as discounts for the payment of cash; the trial court was never invited so to consider them; and no adjudication was ever made by the Oklahoma Courts to the effect that Safeway could not then or cannot now grant discounts for the payment of cash. There is not a line either in the opinions or in the injunction itself which prohibited Safeway or now prohibits Safeway from giving discounts for the payment of cash either in cash, cash register receipts, trading stamps, or any other evidence of credit.

Let the record be quite clear. What Safeway did and wants to do is not to give a cash discount but rather each week to cut prices 2 or 3 or 4 per cent. on selected traffic items. Safeway speaks of this as a "cash discount" by way of a "netted transaction." This is loss leader merchandising, and nothing else.

A true discount for the payment of cash is an allowance which is made by the seller to the buyer to reward him for paying cash, not for buying tomatoes. The amount which the buyer receives is arrived at by multiplying the sum of money paid by the rate of discount allowed, here 2½ per cent. If cash is not paid, the discount is not earned. And it makes no difference whether the subject of the sale is sugar, sarsaparilla or Sunday's dinner with all the trimmings; the discount is computed on the total cash paid.

Safeway did not offer a discount to all who paid cash, no matter what they bought, but, on the contrary, merely offered to sell traffic items which it selected each week as loss leaders. We repeat, the *ex post facto* excuse that Safeway now, and for the first time, offers in this Court that its price cuts on selected traffic items were in effect cash discounts, is nonsense.

Was it, then, a denial of equal protection to allow the continued use of trading stamps across the board, that is to say, without regard to the contents of the market basket, and at the same time to enjoin Safeway from cutting prices on selected traffic items? In view of the easily discernible practical, as well as theoretical, differences between the two situations, we think that Safeway clearly failed to demonstrate that there was any such denial.

In *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78-79, (1911), citing *Bachtel* v. *Wilson*, 204 U. S. 36, 41 (1906); *Louisville & Nashville R. R. Co.* v. *Melton*, 218 U. S. 36 (1910); *Ozan Lumber Co.* v. *Union County Bank*, 207 U. S. 251, 256 (1907); *Munn* v. *Illinois*, 94 U. S. 113, 132 (1876); *Henderson Bridge Co.* v. *Henderson City*, 173 U. S. 592, 615 (1898), this Court said:

> "The rules by which this contention must be tested, as is shown by repeated decisions of this court, are these:

"1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.

"2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.

"3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.

"4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

In *Central Lumber Co.* v. *South Dakota, supra,* 226 U. S. 157 (1912), the Court upheld a statute which prohibited price discrimination against the contention that it violated the Equal Protection Clause because it affected certain lumber dealers, while leaving a number of their competitors undisturbed. The Court, speaking through Justice Holmes, in language which is equally applicable to the case at bar, said:

"The premises may be conceded without accepting the conclusion that this is an unconstitutional discrimination. If the legislature shares the now prevailing belief as to what is public policy and finds that a particular instrument of trade war is being used against that policy in certain cases, it may direct its law against what it deems the evil as it actually exists without covering the whole

field of possible abuses, and it may do so none the less that the forbidden act does not differ in kind from those that are allowed. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 81. *Missouri Pacific Ry. Co.* v. *Mackey*, 127 U. S. 205.

"That is not the arbitrary selection that is condemned in such cases as *Southern Ry. Co.* v. *Greene*, 216 U. S. 400. The Fourteenth Amendment does not prohibit legislation special in character. *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283, 294. It does not prohibit a State from carrying out a policy that cannot be pronounced purely arbitrary, by taxation or penal laws. *Orient Insurance Co.* v. *Daggs*, 172 U. S. 557, 562. *Quong Wing* v. *Kirkendall*, 223 U. S. 59, 62. If a class is deemed to present a conspicuous example of what the legislature seeks to prevent, the Fourteenth Amendment allows it to be dealt with although otherwise and merely logically not distinguishable from others not embraced in the law. *Carroll* v. *Greenwich Ins. Co.*, 199 U. S. 401, 411." (pp. 160-161)

Similarly, in *Heath & Milligan Co.* v. *Worst*, 207 U. S. 338 (1907), the Court, in upholding a statute which required the labeling of the ingredients of mixed paints, but not of paste paints, said:

"• • • [T]here is a distinction between the paints, and the evils to which the statute was addressed may not exist or be as flagrant in one as in the other. There, indeed, may be a degree of competition between them, but other circumstances and conditions may have directed the legislative discretion. This record certainly does not present any data to make it certain that the discretion was arbitrarily exercised. Legislation which regulates business may well make distinctions depend upon the degrees of evil without being arbitrary or unreasonable." (pp. 355-6)

In *Crescent Cotton Oil Co.* v. *Mississippi*, 257 U. S. 129 (1921), the Court citing *Lindsley* v. *Natural Carbonic Gas Co., supra,* sustained an act which prohibited certain corporations from operating any cotton gin, while containing no similar prohibition as to individuals. The Court noted that it was settled law that a State may impose conditions on the right of corporations to do business in the State, even to the extent of excluding them altogether, and then made the following statement:

> "This would be sufficient to dispose of this second contention, but we may add that the law assailed was enacted by the State in the exercise of its police power, to prevent a practice conceived to be promotive of monopoly with its attendant evils. It is clearly settled that any classification adopted by a State in the exercise of this power which has a reasonable basis, and is therefore not arbitrary, will be sustained against an attack based upon the equal protection of the laws clause of the Fourteenth Amendment, and also that every state of facts sufficient to sustain such classification which can be reasonably conceived of as having existed when the law was enacted will be assumed.

Similarly, in *Madden* v. *Kentucky*, 309 U. S. 83, 88 (1940), the Court said:

> "Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it."

In *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 400 (1936), the Court said:

> "The argument that the legislation in question constitutes an arbitrary discrimination, because it does not extent to men, is unavailing. This Court has frequently held that the legislative authority, acting within its proper field, is not bound to extend its regulation to all cases which it might possibly reach. The legislature 'is free to recognize degrees of harm and it may confine its restrictions to those classes of cases where the need is deemed to be clearest.' If 'the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied.' There is no 'doctrinaire requirement' that the legislation should be couched in all embracing terms. *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 411; *Patsone* v. *Pennsylvania*, 232 U. S. 138, 144; *Keokee Coke Co.* v. *Taylor*, 234 U. S. 224, 227; *Sproles* v. *Binford*, 286 U. S. 374, 396; *Semler* v. *Oregon Board*, 294 U. S. 608, 610, 611."

More recently, in *Railway Express Agency, Inc.* v. *New York*, 336 U. S. 106 (1949), the Court held that a New York City traffic regulation which forbade the operation of any vehicle carrying advertisements of others, but permitted advertisements of the products of the vehicle's owner, did not violate the Equal Protection Clause. Appellant argued that the distraction of pedestrians and other drivers resulting from both types of advertisements was the same and that hence the classification was without a rational basis.

The Court concluded, however, that:

> "The local authorities may well have concluded that those who advertise their own wares on their trucks do not present the same traffic problem in view of the nature or extent of the advertising which they

> use. It would take a degree of omniscience which we lack to say that such is not the case. If that judgment is correct, the advertising displays that are exempt have less incidence on traffic than those of appellants.
>
> "We cannot say that that judgment is not an allowable one. Yet if it is, the classification has relation to the purpose for which it is made and does not contain the kind of discrimination against which the Equal Protection Clause affords protection". (p. 110)

Finally, in *Williamson* v. *Lee Optical Co. of Oklahoma*, 348 U. S. 483 (1955), the Court considered a statute which prohibited the fitting of eyeglass lenses by other than licensed ophthalmologists or optometrists, but exempted all sellers of ready-to-wear glasses from its provisions. Upholding the statute under the Equal Protection Clause, the Court said:

> "The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. *Tigner* v. *Texas*, 310 U. S. 141. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. *Semler* v. *Dental Examiners*, 294 U. S. 608. The legislature may select one phase of one field and apply a remedy there, neglecting the others. *A. F. of L.* v. *American Sash Co.*, 335 U. S. 538. The prohibition of the Equal Protection Clause goes no further than the invidious discrimination." (p. 489)

As was demonstrated at the trial, the competitive effect of single trading stamps given with articles of merchandise sold at statutory cost is substantially different from

the competitive effect of Safeway's sales below cost. While the grocer who issues trading stamps advertises, marks, rings up on the cash register, and sells, such articles *at* the statutory cost, Safeway advertises, marks and sells the same articles at a lesser price. While the former's sales have not led to price wars (which the Unfair Sales Act was intended to prevent), the latter's sales below cost have had precisely that effect. Who can say, in these circumstances, that there is no conceivable rational basis for the treatment given below-cost price cuts as distinguished from the issuance of single trading stamps under the Oklahoma Unfair Sales Act as interpreted by the Oklahoma Supreme Court?

The finding of the Oklahoma Courts is also grounded in prior decisions by state courts of last resort covering a long period of years. As the Oklahoma Supreme Court said:

> "[F]rom an examination of our statutes and those of other states, together with appellate court decisions construing same, we conclude that the weight of law, logic and reason clearly and distinctly show that the practice of giving trading stamps in the usual customary manner does not amount to, nor will it sustain, a charge of price cutting." (R. 645, fol. 1202)

Accord: *Bristol-Myers Co.* v. *Lit Bros. Inc.*, 336 Pa. 81, 6 A. 2d 843 (1939); *Food and Grocery Bureau, Inc.* v. *Garfield*, 20 Cal. 2d 228, 125 P. 2d 3 (1942); *Trade Commission* v. *Bush*, 123 Utah 302, 259 P. 2d 304 (1953); *Sperry and Hutchinson* v. *Margetts*, 15 N. J. 203, 104 A. 2d 310 (1954); *Gever* v. *American Stores Co.*, 387 Pa. 206, 127 A. 2d 694 (1956). See also *Weco Products Co.* v. *Mid-City Cut Rate Drug Stores*, 55 Cal. App. 2d 684, 131 P. 2d 856 (1942)).

And as Safeway well knew before it provoked this controversy, the Attorney General of Oklahoma had reached this same conclusion in 1950 (R. 624, fol. 1173). (Opinion of the Attorney General of Oklahoma, May 8, 1950.)

Whatever else may be said and whatever conflict there still may be over the classification of trading stamps, we respectfully submit that the distinction drawn by the Oklahoma Courts between trading stamps given across the board and price cuts on selected traffic items was not an invidious one; there were both practical and legal bases for it. "The prohibition of the Equal Protection Clause goes no further than the invidious discrimination." *Williamson* v. *Lee Optical Co., supra,* 348 U. S. at 489.

Safeway's argument upon the Equal Protection Clause fails.

POINT IV

Safeway has no just cause to complain because the Oklahoma Courts decided the issues which it presented.

When Safeway cut prices on selected traffic items, the Grocers Association sued for an injunction. Safeway's answer took the form of a statement of confession and avoidance; it admitted the price cuts but claimed that they only matched price cuts resulting from the issuance of trading stamps. In this way Safeway put trading stamps in issue the first time. After the litigation got under way, Safeway filed a cross petition to enjoin Speed from issuing trading stamps with merchandise sold at minimum prices. In this way Safeway put trading stamps in issue a second time. These issues had to be decided.

Sec. 598.2 of the Act defines the "cost to the retailer" to mean invoice or replacement cost, whichever is lower;

"less all trade discounts except customary discounts for cash"; to which there are to be added certain other charges. The Oklahoma trial court decided, on the basis of the evidence presented, that trading stamps not exceeding 3 per cent. in value qualified under the Act as a customary discount for cash and therefore were not to be treated as deductions from the price.

How can Safeway be heard to complain because the Court decided the issues that Safeway presented?

The decision was affirmed by the highest court of Oklahoma and will therefore be binding on every other court in the state where the question is presented in the future.

The decision is equally binding on Speed, who was issuing trading stamps, and will serve as *res ajudicata* in any future controversy between Safeway and the 1,700 members of the Grocers Association.

What constitutes a "customary discount for cash" is a question of fact for the Oklahoma Courts to decide. It is not something so indefinite that the failure of the legislature to freeze it at a stated per cent. leaves the statute too vague to enforce, or constitutes an unlawful delegation of power by the legislature to the courts.

> "We have several times held that difficulty in determining whether certain marginal offenses are within the meaning of the language under attack as vague does not automatically render a statute unconstitutional for indefiniteness. *United States* v. *Wurzbach,* 280 U. S. 396, 399 (1930). Impossible standards of specificity are not required *United States* v. *Petrillo,* 332 U. S. 1 (1947). The test is whether the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. *Connally* v. *General Construction Co.,* 269 U. S.

385 (1926)." *Jordan* v. *DeGeorge*, 341 U. S. 223, 231-232 (1950) See also the numerous cases there cited in n. 15.

POINT V

Safeway's preemption argument is not properly before this Court, and, even if it were, has no merit.

Supreme Court Rule 10(c) requires that the Notice of Appeal "shall set forth the questions presented by the appeal." It states, further, that: "Only the questions set forth in the Notice of Appeal or fairly comprised therein will be considered by the court." In compliance with Rule 10 Safeway filed a Notice of Appeal which set forth four questions. Each of them alleged that, for one reason or another, the Oklahoma Unfair Sales Act, as here applied, violated the Fourteenth Amendment (R. 693-695; fols. 1249-1252).

Supreme Court Rule 15(c)(1) requires that the Jurisdictional Statement called for by Rule 13 shall contain "the questions presented by the appeal, expressed in the terms and circumstances of the case * * *." It, too, goes on to provide that: "Only the questions set forth in the jurisdictional statement or fairly comprised therein will be considered by the court." In compliance with Rule 15 Safeway filed a Jurisdictional Statement which paraphrased and restated the same four questions under the Fourteenth Amendment which had been originally stated in its Notice of Appeal (Jurisdictional Statement, pp. 3-4).

Earlier, in its Petition in Error to the Oklahoma Supreme Court, Safeway had similarly asserted that the

judgment of the trial court denied it the equal protection of the law, in violation of the Fourteenth Amendment, and that the judgment also deprived it of property without due process, in violation of "the Fifth [sic] Amendment" (R. 4, fol. G).

Without complying with the requirements of the foregoing Rules of this Court, Safeway now for the first time asserts that the Oklahoma Unfair Sales Act is unconstitutional because, under the Supremacy Clause, Article VI, Clause 2 of the Constitution of the United States, the Federal antitrust laws preempt the field. This, of course, is quite a different federal question, having nothing whatever to do with the Equal Protection or Due Process Clauses of the Fourteenth Amendment. Not having been presented to the Oklahoma Courts, not having been adjudicated by the Oklahoma Courts, not having been specified in the Notice of Appeal, and not having been included in the Jurisdictional Statement, this new question is not properly before this Court. *Braniff Airways* v. *Nebraska Board*, 347 U. S. 590, 597, n. 14 (1953); *State Farm Ins. Co.* v. *Duel*, 324 U. S. 154, 160 (1944); *Charleston Assn.* v. *Alderson*, 324 U. S. 182 (1944); *Whitney* v. *California*, 274 U. S. 357, 360 (1926).

The fact that Safeway may have preserved for this Court questions under the Fourteenth Amendment, does not mean that it preserved a Supremacy Clause question which was never presented to or adjudicated by the lower courts and was not included in the Notice of Appeal or Jurisdictional Statement filed with this Court.

> "[W]e are compelled to hold that we are confined to a discussion of the only Federal question which this record presents * * *." *Dewey* v. *Des Moines*, 173 U. S. 193, 200-201 (1898)

Before presenting a question as far reaching as this, a decent regard for the federal system requires that that question first be presented to the State courts. It is clear that it cannot be presented for the first time in this Court in the Appellant's Brief on the Merits.

Even on the merits, however, which we believe this Court never properly reaches, the claim of preemption fails. Federal and state anti-trust laws have existed and have been enforced side by side for over half a century.

> "That state legislatures have the right to deal with the subject-matter and to prevent unlawful combinations to prevent competition and in restraint of trade, and to prohibit and punish monopolies, is not open to question." *Waters-Pierce Oil Co.* v. *Texas* (No. 1), 212 U. S. 86, 107 (1908)

See also *National Cotton Oil Co.* v. *Texas*, 197 U. S. 115 (1904); *Smiley* v. *Kansas*, 196 U. S. 447 (1904).

In *Parker* v. *Brown*, 317 U. S. 341 (1942), this Court had occasion to consider whether the Sherman Act prohibited a State from maintaining a commodity stabilization program because of its admitted effect on interstate commerce. The Court rejected the argument which Safeway now makes, saying:

> "We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a State or its officers or agents from activities directed by its legislature." (p. 350)

In *Pennsylvania* v. *Nelson*, 350 U. S. 497 (1955), this Court restated and amplified the basic criteria for preemption as outlined previously in *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218 (1946),

> "*First*, '[t]he scheme of federal regulation [is] so pervasive as to make reasonable the inference that

> Congress left no room for the states to supplement it.' *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. at 230.
>
> • • •
>
> "*Second*, the federal statutes 'touch a field in which the federal interest is so dominant that the federal system [must] be assumed to preclude enforcement of state laws on the same subject.' *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S., at 230, citing *Hines* v. *Davidowitz*, [312 U. S. 52, 67]
>
> • • •
>
> "*Third*, enforcement of state • • • acts presents a serious danger of conflict with the administration of the federal program."

Starting at one end of the range of tests which are commonly referred to in this area of the law, it is quite clear that Safeway cannot claim that the conflict which it alleges between the state and federal laws is such that compliance with one is defiance of the other.

At the other end of the range, it would seem that anyone conversant with the administrative realities of trade regulation in such a volatile field as the retail grocery industry must realize that to invalidate the State Act and thrust upon the federal authorities the burden of controlling incipient price wars before they reach major proportions would be to hamper, rather than aid, the attainment of Congress' objective as manifested by the antitrust laws.

CONCLUSION

It is respectfully submitted that this Court should dismiss the appeal or affirm the judgment of the Court below.

Respectfully submitted,

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Proof of Service

I, M. A. NED LOONEY, one of the attorneys for Oklahoma Retail Grocers Association, Inc., and Louie J. Speed, Inc., Appellees herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 16th day of April, 1959, I served copies of the foregoing Appellees' Brief on the Merits on Safeway Stores, Incorporated, a corporation, by mailing copies in duly addressed envelopes, with airmail postage prepaid, to its respective attorneys as follows:

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IN THE

Supreme Court of the United States

October Term, 1958

No. 252

SAFEWAY STORES, INCORPORATED,

Appellant,

v.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., and LOUIE J. SPEED, INC.,

Appellees.

On Appeal from the Supreme Court of the State of Oklahoma

MOTION AND BRIEF OF AMICUS CURIAE

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IN THE

Supreme Court of the United States

October Term, 1958

No. 252

SAFEWAY STORES, INCORPORATED,

Appellant,

v.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., and LOUIE J. SPEED, INC.,

Appellees.

On Appeal from the Supreme Court of the State of Oklahoma

Motion for Leave to Submit a Brief Amicus Curiae.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The undersigned, as counsel for The National Association of Tobacco Distributors, Inc., a membership corporation organized under and by virtue of the laws of the State of New Jersey as a business league, and in behalf of the said National Association of Tobacco Distributors, Inc., respectfully moves this Court for leave to file the accompanying brief as *amicus curiae.*

The organization that proposes to submit this brief is the only national association of wholesale tobacco mer-

chants in the United States and, as such, represents a trade engaged in the distribution of tobacco, candy, and other soft goods consumer commodities having an estimated retail value in excess of Six Billion Dollars ($6,000,000,000) to more than one million three hundred thousand (1,300,000) retail outlets throughout the United States. The said Association and its members, have a direct and acute interest in this proceeding which raises before this Court for the first time the question whether a state law prohibiting sales below cost as an unethical method of business competition is violative of the Federal constitution.

The members of this Association are engaged in a marginal business having minimal markups over invoice costs. They would be drastically affected by this Court's invalidation of sales below cost laws. The Association was only recently advised of the pendency of the instant case at its annual meeting in Chicago held in April of this year and counsel for the Association was requested on April 10, 1959 by the Association's Board of Directors to seek leave and to file a brief *amicus curiae* in support of the appellees herein. It is, at this writing, only two weeks since counsel for the Association first had an opportunity to read the briefs of the parties hereto and it is for that reason that the Association seeks leave at this late date to file its brief *amicus curiae*.

The National Association of Tobacco Distributors, Inc. has devoted considerable time and effort to studies of state laws prohibiting or limiting sales below cost. It has consequently amassed a substantial fund of economic and legal material bearing upon this problem. Inasmuch as this proceeding brings before this Court a question of novel impression with respect to such state legislation, the

said Association desires to make available to this Court the fruits of its study on the questions at issue and to speak for it members and their one millon three hundred thousand (1,300,000) customers in support of unfair sales legislation which, the Association believes, not only conduces to general business morality but also is essential for its members' continued economic viability.

Although the record below would indicate that the original appeal is solely from the rather narrow question of the constitutionality of the Oklahoma Unfair Sales Act as applied and construed under the circumstances of record in this case, an examination of the appellant's brief shows that the appellant seeks to call in question not only the constitutionality of the Oklahoma law in particular but also the constitutionality of all such laws in general. A ruling by this Court adverse to the appellees would therefore not only have a direct effect upon these appellees but, most likely, would have an equally direct and adverse effect upon each and every member of this Association engaged in business in any one of the thirty-eight (38) jurisdictions presently enjoying the benefits of unfair sales laws regulating the sale of the commodities in which they deal.

The said Association is deeply disturbed and directly affected by the present assault upon sales below cost laws. It believes that it has and can supply additional information to this Court beyond that already canvassed in the briefs submitted by the appellant and the appellees. The accompanying brief contains a study of the economic factors that impel state legislatures to enact unfair sales laws both of general and particlular application. It also contains a citation and discussion of the treatment accorded by the courts to analogous state legislation when subjected to constitu-

tional attack as well as a discussion of the relationship between federal and state loss limitation legislation.

None of the foregoing material is treated in any detail in the briefs of the parties to this proceeding. It is believed that all of it is material to a determination of the issues here raised.

It is respectfully urged that the accompanying brief *amicus curiae* be accepted by this Court. Consent of counsel for all parties to the filing of this brief has been sought. Counsel for the appellees has consented but counsel for the appellant have refused such consent.

Dated: May 6, 1959.

Respectfully submitted,

CHESTER INWALD
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BRIEF OF AMICUS CURIAE

The National Association of Tobacco Distributors, Inc. respectfully submits this brief as *amicus curiae* in support of the appellee. The interest of the Association in the issues raised by this case is set forth in the motion for leave to file the brief for *amicus curiae* annexed hereto.

Statement of the Case

The proceedings in this case are fully detailed in the appellee's brief on the merits (pp. 1-11) and will only be briefly summarized here.

The action below was originally brought for the purpose of enjoining the appellant from selling certain selected items of merchandise below cost. The appellant is a nationwide chain of grocery stores, having an avowed purpose of capturing a stated percentage of the total grocery business done within each territorial area in which it operates. One of the techniques which the appellant apparently commonly employs to capture a significant area of each market in which it is engaged is to sell merchandise below cost for the purposes of diverting trade away from its competitors (*See U. S.* v. *Safeway Stores, Inc.* (D. C. Texas, 1957) 20 F. R. D. 451 at 453; *and see* final judgment, Hon. Joe E. Estes, District Judge, United States District Court, Northern District, Texas, Civil Docket No. 3173, filed December 7, 1957, decretal par. No. IV, C. C. H. 1957 Trade Cases, par. 68,871 at p. 73,531, not otherwise reported).

In the instant case it would appear that the appellant, Safeway Stores, Inc. set for itself a goal of 20% of all the grocery business done in Oklahoma city. Employing the tactics previously condemned by the federal courts in Texas as a violation of Section 3 of the Robinson-Patman Act,

appellant proceeded to reduce its prices on certain selected popular items which had a ready consumer acceptance at well known and established prices. Concededly, it did not offer all of its merchandise at or below cost. To use the very language of appellant's brief "Instead, it selected the ones it thought the customers were familiar with the price of (R. 258)." (Appellant's brief, pp. 9-10.)

As a result of these price cuts, other grocery chains felt impelled to meet Safeway's below cost prices and apparently the prospect of a generalized price war at numerous places throughout the state became imminent. To avert this danger, the Oklahoma Retail Grocers Association sought and obtained in the Oklahoma County District Court an injunction prohibiting Safeway from selling merchandise at less than its cost and in violation of the provisions of the Oklahoma Unfair Sales Act. From this decision, Safeway appealed to the Oklahoma Supreme Court which affirmed the injunction (*Safeway Stores, Inc.* v. *Oklahoma Retail Grocers Association* (1957) 322 P. 2d 179).

From the facts before this Court, this case presents the classical example of the reason for the enactment by the various states of loss limitation statutes, commonly called unfair sales laws. The avowed purposes of such legislation is to designate the practice of selling below cost as an unfair method of competition tending to monopolize trade, destroy small competitors and deceive customers into believing that all merchandise sold by the price-cutter is similarly low-priced. It is this avowed purpose of the Oklahoma Unfair Sales Law which the appellant here calls into question as violative of the federal constitution on the grounds that, under some hypothetical but not as yet established factual situations, the law might work an inequity against an as yet undiscovered merchant who desires to sell certain items below cost with an allegedly innocent intent.

SUMMARY OF ARGUMENT

Point I

The Oklahoma Unfair Sales Act (15 Okla. Stat. Chapt. 14, Secs. 598.1-.11) is an expression of the state's economic policy reasonably related to the promotion of the public welfare and does not prevent the appellant from competing on fair and equitable terms with all other merchants of groceries within the state.

Since the law, as enacted, is reasonably related to the ends desired to be achieved, this Court will not substitute its judgment as to the economic validity of a policy for that of the legislature.

The exemption in the statute permitting the appellant and any other retailer to sell below its cost in order to meet the lower cost price of a competitor does not operate to invalidate the statute and make it repugnant to the constitution

The legislature of the State of Oklahoma has the plenary power to absolutely prohibit commercial practices which it finds to be generally injurious to the public welfare of the state. Thus, even if the appellant was prohibited from meeting the lower price of a competitor, it would have no cause to complain of the unconstitutionality of the statute in question so long as the practice proscribed has a reasonable relationship to the ends to be achieved where the ends are within the competence of the state's police power. In point of fact, however, the appellant's conduct is not so circumscribed by the decision below. It is only prevented from appearing to meet its competitor's prices while in actuality it is not so doing.

Point II

The Oklahoma Unfair Sales Act does not violate the federal supremacy clause in Article VI, Clause 2 of the Constitution of the United States. Regulation by Congress of interstate commerce does not pre-empt state regulation of commercial activities. The Oklahoma Unfair Sales Act is consonant to and in conformity with federal regulation of similar conduct in the course of interstate transactions.

ARGUMENT

POINT I

The Oklahoma Unfair Sales Act does not violate the due process or equal protection clauses of the Fourteenth Amendment to the United States Constitution and the appellant, Safeway Stores, has wholly failed to disclose any infringement of its constitutional rights.

At this date it cannot be questioned that the police power of the state to legislate for the public welfare of its inhabitants is an essential element of title to private property, and it is no objection to its reasonable exercise that private property is impaired in value or otherwise adversely affected. (*Ziffrin Inc.* v. *Reeves* (1939) 308 U. S. 132, 139; *City of Clayton* v. *Nemours* (1944) 353 Mo. 61, 182 S. W. 2d 57 *app. dism.* 323 U. S. 684; *East New York Savings Bank* v. *Hahn* (1945) 326 U. S. 230.) The sole object of inquiry before this Court is whether this particular exercise of the police power by Oklahoma, in prohibiting sales below cost with the intent of injuring competition, is a reasonable one or whether it is so unreason-

able, arbitrary and discriminatory as to deprive the appellant of due process and the equal protection of the law.

Laws prohibiting sales below cost in their present form have been in existence now for a quarter of a century since the enactment in 1935 of the first such law by the State of California (Cal. Gen. Stat., 1935, Chap. 477). Since that time some thirty-one states[1] have enacted laws of general application proscribing sales below cost while twenty-seven states have in addition or instead, enacted such laws applicable only to one or more products particularly sensitive

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[1] *Arizona* (Rev. Stat., 1955, Vol. 5, Tit. 44, Chap. 10, Art. 4); *Arkansas* (Ark. Stat. Ann., 1947, Vol. 6, Tit. 70, Part 2, Chap. 3); *California* (Business & Professional Code Div. 7, Pt. 2, Chap. 4); *Colorado* (Colo. Rev. Stat., 1953, Vol. 3, Chap. 55, Art. 2); *Connecticut* (Conn. Gen. Stat. Rev., 1949, Tit. 48, Chap. 314); *Hawaii* (Hawaii Rev. Laws, 1955, Tit. 24, Chap. 205); *Idaho* (Idaho Code, 1947, Tit. 48, Chap. 4 as amended); *Kansas* (Kan. Gen. Stat., 1949, Chap. 50, Art. 4); *Kentucky* (Ky. Rev. Stat., 1956, Secs. 365.020-365.070); *Louisiana* (La. Rev. Stat., 1950, Tit. 51, Part VIII, Sub-part E); *Maine* (Me. Rev. Stat., Ninth Rev., Chap. 184); *Maryland* (Md. Code, 1951, Art. 83, Secs. 111-115); *Massachusetts* (Mass. Gen. Laws, 1932, Chap. 93, Secs. 14E-14K); *Minnesota* (Minn. Stat., 1953, Chap. 325); *Montana* (Mont. Rev. Code, 1947, Tit. 51, Chap. 1); *Nebraska* (Neb. Rev. Stat., 1943, Chap. 59, Art. 12); *New Hampshire* (N. H. Rev. Stat., 1955, Chap. 358); *New Jersey* (N. J. Rev. Stat., Tit. 56, Chap. 4); *North Dakota* (N. D. Rev. Code, 1943, Chap. 51-10); *Oklahoma* (Okla. Stat., 1951, Tit. 15, Chap. 14, Secs. 598.1-11); *Oregon* (Ore. Rev. Stat., Tit. 50, Chap. 646, Secs. 646.100-180); *Pennsylvania* (Pa. Laws of 1941, Act No. 344); *Rhode Island* (R. I. Pub. Laws, 1939, Chap. 671); *South Carolina* (So. Car. Code of Laws, 1952, Tit. 56, Chap. 2, Art. 3); *Tennessee* (Tenn. Code, 1955, Tit. 69, Chap. 3); *Utah* (Utah Code, 1953, Tit. 13, Chap. 5); *Virginia* (Va. Code, 1950, Tit. 59, Chap. 2); *Washington* (Wash. Rev. Code, 1951, Tit. 19, Chap. 19.88); *West Virginia* (W. Va. Code, Secs. 4678 (8) (a)-(n)); *Wisconsin* (Wisc. Stat., 1955, Tit. XII, Chap. 100, Sec. 100.30); and *Wyoming* (Wyo. Comp. Stat., 1945, Art. 4, Secs. 39-406 to 39-416).

to price manipulation.[2] These laws demonstrate a widespread response to the felt necessity of curbing a sales practice deemed by many to be a form of commercial fraud and deception deleterious to a healthy competitive economy —the "loss leader."

The rise during the past fifty years of mass retail distributive entities employing new sales techniques left the older and smaller retail distributors at a competitive disadvantage. Many of the new sales techniques resulted from allegedly more efficient economic concentrations of capital and an allegedly more rational geographic distribution of facilities. However, the loss leader is not attributable to the more efficient operative ability of the large retailer. It is the calculated use of the leverage afforded

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[2] *E.g.* states enacting laws applicable to milk and dairy products: *Arkansas* (Ark. Acts of 1955, Act 380); *Idaho* (Idaho Code, 1947, Sec. 37-1003B); *Kansas* (Kan. Gen. Stat., 1957 Supp., Sec. 50-503); *Louisiana* (La. Rev. Stat., 1950, Tit. 40, Chap. 4, Sub-part D); *Mississippi* (Miss. Laws, 1956, Chap. 134); and *Oklahoma* (Okla. Laws of 1955, S. B. 305). States enacting laws applicable to cigarettes: *Alabama* (Acts of 1951, Act No. 805); *Arkansas* (Acts of 1951, Act 101); *Colorado* (Rev. Stat., 1953, Chap. 55, Art. 3, Sec. 55-3-1 *et seq.*); *Connecticut* (Gen. Stat. Rev., 1949, Tit. 15, Chap. 98, Sec. 2004); *Indiana* (Acts of 1949, Chap. 51); *Iowa* (1954 Code, Chap. 551a); *Kentucky* (Rev. Stat., 1956, Sec. 365.280); *Maryland* (Acts of 1956, Chap. 90); *Massachusetts* (Acts Resolves of 1941, Chap. 715); *Mississippi* (Laws of 1954, Chap. 380); *New Jersey* (Laws of 1952, Chap. 247); *Ohio* (Rev. Code, Secs. 1333.11 *et seq.* as amended, Laws of 1957 H. B. 800); *Oklahoma* (Stat., 1951, Tit. 15, Chap. 14, Secs. 599.1 *et seq.* as amended, Laws of 1957 S. B. 449); *Pennsylvania* (Laws of 1949, Act 478); *Rhode Island* (Acts and Resolves of 1941, Chap. 1039); *Tennessee* (Ann. Code, 1955, Tit. 69, Chap. 4, Sec. 69-403) and *Washington* (Laws of 1957, Chap. 286). States enacting laws applicable to miscellaneous products: *Arkansas* (Ark. Acts of 1949, Act 282, *liquor*); *Louisiana* (La. Rev. Stat., 1950, Tit. 51, Sec. 522, *drugs and cosmetics*); *Massachusetts* (Mass. Acts of 1950, Chap. 515, *motor fuel*); *Michigan* (Mich. Comp. Laws, 1948, Sec. 445.174, *bakery and petroleum products*); *New Mexico* (N. M. Rev. Stat., 1953, Sec. 46-9-11(B), *beer, wines and liquor*); and *Utah* (Utah Code, 1953, Tit. 5, Chap. 4, Sec. 5-4-6, *agricultural products*).

by size and mass to sell at sacrificial prices for the purpose of destroying competition or absorbing a predetermined percentage of the market volume. Accompanying these sales at prices often below the actual cost of acquisition of the product, is the, frequently false, advertising overtone that all other merchandise is sold by the loss leader practitioner at equally low prices.

A loss leader "* * * involves the offer for sale of specific commodities at a very low markup—sometimes even at or below actual invoice cost. Concessions of this character are usually confined to widely advertised, branded articles on which the public is able to make price comparisons. * * * In every case, however, at least one objective is to attract the consumer to the store and to place before his eyes the other commodities offered for sale, on which the normal profit margin is asked, at the same time establishing the impression that the store maintains a generally low price policy. * * *

"Mass distributors are able to use leader tactics more effectively than most independents, for several reasons. Their superior financial resources permit them to advertise the leader offer more widely. Their wider diversification is an important asset; losses sustained on any one item can readily be charged to total cost as an advertising expense. Furthermore, they are often able to push the sale of private brands, on which the difficulty of price comparisons makes possible a comfortable profit, as an incident of a sales campaign headed by a widely advertised leader. Finally, the geographic dispersion of chains makes possible price discrimination between stores in different localities. Prices can be lowered in any area in which competition is intense, and raised simultaneously where the pressure is less keen. Tactics of this character cannot be duplicated effectively by independents". (Zorn & Feldman, *Business*

Under the New Price Laws (Prentice-Hall, 1937) pp. 9 and 10, see also *id.* at 265 to 274, 317 to 326.)

In an article originally published as long ago as the November 15, 1913 issue of Harper's Weekly, Mr. Brandeis condemned the loss leader practice, saying:

> "* * * But the cut-price article would more appropriately be termed a 'mis-leader'; because ordinarily the very purpose of the cut-price is to create a false impression.
>
> "The dealer who sells the Dollar Ingersoll watch for sixty-seven cents, necessarily loses money in that particular transaction. He has no desire to sell any article on which he must lose money. He advertises the sale partly to attract customers to his store; but mainly to create in the minds of those customers the false impression that other articles in which he deals and which are not of a standard or known value will be sold upon like favorable terms. The customer is expected to believe that if an Ingersoll watch is sold at thirty-three and one-third percent less than others charge for it, a ready-to-wear suit or a gold ring will be sold as cheap. The more successful the individual producer of a trade-marked article has been in creating for it a recognized value as well as a wide sale, the greater is the temptation to the unscrupulous to cut the price. Indeed a cut-price article can ordinarily be effective as a 'mis-leader' only when both the merits and the esablished selling price are widely known." *Harper's Weekly,* Nov. 15, 1913 at p. 10; *see also* Alpheus T. Mason, *Brandeis: A Free Man's Life* (Viking, 1946) 424-8.

The economic experience abroad with respect to sales below cost betrays a similar reaction to this practice. In 1931, by order of the Government of Great Britain, the Lord Chancellor and the President of the Board of Trade of that country appointed a committee of prominent economists to investigate certain monopolistic practices in the

United Kingdom. Concerning the problem of loss leaders, this committee found:

> "We have been impressed by the volume and force of the testimony as to the harmful effects of price-cutting upon the manufacturers and distributors of advertised branded goods and ultimately, as was contended, upon the public. The selling of branded goods at abnormally low prices in order to attract customers to buy other goods tends to disorganize and antagonize the retail trade. Shopkeepers in the neighborhood of price-cutters cease to stock the goods affected or at any rate cease to push them with the result that the manufacturer finds his sales falling off. In the end the price-cutters themselves may cease to stock the goods finding that they are no longer effective as a decoy." (Cited, Kaufman & Hartman, *History of State Unfair Sales Acts* (N.A.T.D. Inc., 1950) page 6.)

Sales below cost have often been treated by state courts and federal courts of inferior jurisdiction as valid subjects for legislative restraint. The evils they conduce have often been commented upon. It has been stated that cutthroat price competition is a weapon by which the large firm drives its smaller rivals out of business after which the price-cutter may have a monopoly in the affected territory. (*State* v. *Langley* (1938) 53 Wyo. 332; 84 P. 2d 767). It has been pointed out that if a chain store sets its prices below cost in one area, there is an almost irresistible conclusion that its prices in another area will be raised to compensate for the losses (*U. S.* v. *N. Y. Great A & P Tea Co.* (CCA 7, 1949) 173 F. 2d 79 at p. 87 *cf. Moore* v. *Mead's Fine Bread* (1954) 348 U. S. 115, 119). It also seems fairly well established that a loss leader practitioner who sells one item below cost often raises his prices on many other articles in the same store to compensate for his excessively low price on the leader (See Federal Trade Commission

Report entitled *Chain Stores—Chain Store Price Policies*, S. Doc. No. 85 (1933) 73rd Cong. 2d Sess. at pp. 29, 104). In any case there is little doubt that the reason why a large retail chain offers merchandise at less than cost is for the purpose of deceiving its customers into believing that the seller is offering all his goods at low prices when in fact the majority of his prices are at least as high as those prevailing generally in the trading area and sometimes even higher (*Wholesale Tobacco Dealers Bureau* v. *National Candy & Tobacco Co.* (1938) 11 Cal. 2d 634, 82 P. 2d 3, 13).

Given the situation thus described, a situation which a substantial majority of the states, representing all geographic regions of the nation and a cross section of the national economic interests, have found, since the turn of the century, to be an evil, there can be no doubt, under the prevailing rules of constitutional interpretation, that it was well within the competence of the state to seek corrective measures for its remedy (*Olsen* v. *Nebraska* (1940) 313 U. S. 236, 244-245). There remains but to consider whether the means adopted by the State of Oklahoma to achieve the end desired are so peculiar and arbitrary as to deprive this appellant of rights guaranteed by the Due Process and Equal Protection clauses of the United States Constitution.

The principal plaint that the appellant brings before this court is that in certain hypothetical circumstances, it would be deprived of the privilege of meeting its competitor's prices by selling below cost.

At the outset it must be noted that, inasmuch as the evidence of record does not disclose the existence in this case of those hypothetical circumstances, such extreme examples are not now before this court. In *Day-Brite Lighting Inc.* v. *Missouri* (1952), 342 U. S. 421 at 424 this court stated "Extreme cases are conjured up where an

employer is required to pay wages for a period that has no relation to the legitimate end. Those cases can await decision as and when they arise." To the same effect, see also *F.T.C.* v. *National Lead Co.* (1957), 352 U. S. 419 at 431 and *International Salt Co.* v. *U. S.*, (1947) 332 U. S. 392 at 401.

Assuming, however, without conceding the same, that one of the hypotheticals set forth in the appellant's brief at pages 20 through 22 thereof, were before this court, such situation would not mar the constitutional validity of this unfair sales statute.

Where a state has found certain types of conduct to be generally harmful to the best interest of its citizens, the state may validly proscribe all such conduct even though under certain unusual circumstances the prohibited conduct is innocent and does not give rise to the evil to be remedied.

In *Central Lumber Co.* v. *South Dakota* (1912), 226 U. S. 157, the State of South Dakota prohibited under criminal sanction the sale of a commodity by a dealer at a lower rate in one section of the state than such person charged for such commodity in another section. Mr. Justice Holmes, speaking for this court, upheld the constitutional validity of the statute stating (at 160) "If the legislature shares the now prevailing belief as to what is public policy and finds that a particular instrument of trade war is being used against that policy in certain cases, it may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses, and it may do so none the less that the forbidden act does not differ in kind from those that are allowed. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 81. *Missouri Pacific Ry. Co.* v. *Mackey*, 127 U. S. 205."

In *Railway Express* v. *New York* (1948), 336 U. S. 106, 110, this court stated "* * * the classification has relation to the purpose for which it is made and does not contain the kind of discrimination against which the Equal Protection Clause affords protection. It is by such practical considerations based on experience rather than by theoretical inconsistencies that the question of equal protection is to be answered. *Patsone* v. *Pennsylvania*, 232 U. S. 138, 144; *Marcus Brown Co.* v. *Feldman*, 256 U. S. 170, 198-199; *Metropolitan Co.* v. *Brownell*, 294 U. S. 580, 585-586. And the fact that New York City sees fit to eliminate from traffic this kind of distraction but does not touch what may be even greater ones in a different category * * * is immaterial. It is no requirement of equal protection that all evils of the same genus be eradicated or none at all." See also *Hughes* v. *Superior Court* (1949), 339 U. S. 460 and cases collected at 468.

In point of fact, however, the alleged inconsistencies in the law listed in the appellant's brief at pages 20 through 22 thereof are not inconsistencies at all and do not prevent the appellant from competing or injure it in its competition. The first hypothetical, for example, found at the bottom of page 20 of the appellant's brief posits a situation where a grocer sells certain items at one cent above invoice cost which is less than statutory cost because "he believes he makes more money on these items at this markup than he does" on other items with a higher markup. In this hypothetical, if the dealer is making money, then obviously he is not selling below cost. He may be selling below the presumptive markup as established in Section 598.2(a) of the Oklahoma Unfair Sales Act but he is not selling "below cost" since this presumptive markup is only applicable, by the very terms of that section, "in the absence of proof of a lesser cost". A merchant who "believes" he is making

money on a one cent markup should be able to show that his costs of doing business for this particular item is less than one cent. Such merchant is not selling below cost and the appellant may safely meet his prices even if they involve a sale by appellant below cost to it.

The second hypothesis is a completely erroneous view of the instant case. In the hypothesis (appellant's brief, p. 21) it is claimed that a seller may not reduce his prices below cost on all his merchandise for the purposes of meeting the competition of a competitor who employs trading stamps. The appellant, of course, did not engage in an across the board price reduction. It reduced prices only on the items "it thought the customers were familiar with the price of" (appellant's brief, pp. 9 and 10). This is precisely the evil which unfair sales laws are designed to correct—the evil of reducing prices on certain selected items for the purposes of deceiving consumers into believing that an across the board price reduction has been given. There is nothing in the case below that would prevent the appellant from meeting trading stamp competition by giving a uniform cash discount, in good faith, on all the commodities it offered for sale. What the Oklahoma law does prohibit is the appellant's avowed practice of appearing to grant such a discount by making selective reductions in price, while, in actuality, not giving a cash discount on the vast majority of its merchandise.

Hypothesis 3 as found at page 21 of the appellant's brief posits the existence of a high hearted open-handed grocer who desires to distribute his Easter hams at cost in the Easter season. His objective is not to steal a march on his competitors but to create good will among his customers. The example given at page 22 of the appellant's brief is basically the same, only here the hypothetical

grocer gives away bread below cost rather than hams. The appellant claims that it could not meet the prices of these fictitious competitors since their below cost prices were established without an intent to destroy competition and solely for the purposes of fostering good will. However, the same law which permits these fictional competitors to sell at below cost prices for unsullied motives equally and impartially permits the appellant to do the same. The appellant also may distribute bread to the poor and hams to the celebrants at below cost prices if its motive is pure and there is absent an intent to affect competition adversely.

The final example to be considered (appellant's brief, p. 21) quite clearly falls into the *de minimis* category. In this last hypothetical, a grocer acquires Grade A peaches at a bargain price and sells them above statutory costs. To maintain a customary price differential he reduces the price on Grade B peaches below statutory cost. The appellant deplores the fact that under these non-existent circumstances, it would not be able to meet the price on Grade B peaches. The appellant, however, neglects to mention that the essence of the bargain is the special sales price on Grade A peaches—a price which the statute specifically permits the appellant to meet. Query also whether appellant may not meet the price on Grade B peaches since the purpose of its reduction would likewise be not to sell below cost for the purposes of injuring competition but rather for the purposes of maintaining the customary price differential between the appellant's Grade A and Grade B peaches.

Thus the anticipated horrendous results which the appellant foresees as a consequence of the continued validity of the Oklahoma Unfair Sales Law are shown to be figments of the imagination which not only have not occurred but which, if present, would in no way inhibit the appellant's competitive ability.

It is, in addition, inaccurate to claim as the appellant does (brief, p. 17) that the Oklahoma Unfair Sales Law is unique in drafting its meeting competition exemption in terms of meeting competitors' statutory cost prices. The Iowa Unfair Cigarette Sales Act (Iowa Code, 1954, Chap. 551A, sec. 551A.7, par. 1) contains a similarly worded exemption and has been construed by the Supreme Court of that state (*May's Drug Stores, Inc.* v. *State Tax Commission* (1951), 242 Iowa 319, 45 N. W. 2d 245) as having the same intent and meaning as all other statutes differently worded which grant a seller an exemption in order to meet the lawful price of the seller's competitor. There is no evidence to show that the courts of Oklahoma otherwise construe their statute than do the courts of Iowa. In point of fact the court below did hold that this questioned section of the law was to be construed as to permit this appellant to meet the "legal" price of its competitors and not the "cost" price of its competitors (322 P. 2d 179 at 181).

Thus the issue that the appellant raises in this appeal is doubly hypothetical. Not only is there no evidence to show that any situation has arisen which would give rise to a problem in the construction of the meeting competition section of the Oklahoma Unfair Sales Law, but also there is no evidence that, if such problem should ever arise, the courts of Oklahoma have in the past or would in the future construe the law in a fashion as to prevent a seller from meeting any lawful price of his competitor.

In actuality there is no substantial argument as to the constitutionality of loss leader limitation laws. In the thirty-eight jurisdictions which have enacted such laws, some of these laws applying to all products generally, others applying to one or more products, the courts have been almost uniform in affirming the principles of these

laws against constitutional attack.[3] The only exception discovered is in the case of the State of Georgia which has invalidated its unfair cigarette sales act in *Williams* v. *Hirsch* (1955) 87 S. E. 2d 70, in a terse opinion which apparently relied upon fair trade cases and not upon loss leader laws at all. It would further appear that the court's ruling was based upon the theory that the business of cigarettes was not "affected with a public interest," a standard abandoned by this Court in *Nebbia* v. *New York* (1934) 291 U. S. 502 as so clearly shown in this Court's decision in *Olsen* v. *Nebraska* (1940) 313

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[3] The following states have upheld the validity of sales below cost laws: *Alabama* (*Hilliard* v. *Edwards*, Cir. Ct. Montgomery Cty., in equity, Case No. 26,044, decision and opinion rendered by Honorable Walter B. Jones, April 16, 1954); *Arizona* (*State* v. *Walgreen Drug Co.* (1941) 57 Ariz. 308,113 P. 2d 650 eliminating one provision but affirming constitutionality); *California* (*Wholesale Tobacco Dealers Bureau* v. *National Candy & Tobacco Co.* (1938) 11 Cal. 2d 634, 82 P. 2d 3); *Colorado* (*Dikeou* v. *Food Distribution Association* (1941) 107 Colo. 38,108 P. 2d 529); *Connecticut* (*Carroll* v. *Schwartz* (1940) 127 Conn. 126, 14 Atl. 2d 754); *Iowa* (*May's Drug Stores, Inc.* v. *State Tax Commission* (1951) 242 Iowa 319, 45 N. W. 2d 245); *Kansas* (*State of Kansas* v. *Consumer Warehouse Market Inc.* (Sup. Ct. Kan. 1958) 329 P. 2d 638); *Kentucky* (*Moore* v. *Northern Kentucky Independent Food Dealers* (1941) 286 Ky. 24,149 S. W. 2d 755); *Louisiana* (*Louisiana Wholesale Distributors Association Inc.* v. *Rosenzweig* (La. Sup. Ct., 1948) 36 So. 2d 403); *Massachusetts* (*Fournier* v. *Troiancllo* (1955) 332 Mass. 636, 127 N. E. 2d 167); *Minnesota* (*McElhone* v. *Geror* (1940) 207 Minn. 580, 292 N. W. 414); *Montana* (*Associated Merchants of Montana* v. *Ormesher* (1939) 107 Mont. 530, 86 P. 2d 1031); *Nebraska* (*Hill* v. *Kusy* (1949) 150 Neb. 653, 35 N. W. 2d 594); *New Hampshire* (*McIntire* v. *Borofsky* (1948) 95 N. H. 174, 59 Atl. 2d 471); *New Jersey* (*Lane* v. *Tilton* (1951) 81 Atl. 2d 786 holding statute unconstitutional but affirming constitutionality of such statutes generally); *Oklahoma* (*Adkson* v. *Oklahoma Retail Grocers Association* (1951) 204 Okla. 199, 228 P. 2d 376); *Tennessee* (*Rust* v. *Griggs* (1938) 172 Tenn. 565, 113 S. W. 2d 733); *Washington* (*State* v. *Sears* (1940) 4 Wash. 2d 200, 103 P. 2d 337); *Wisconsin* (*State* v. *Ross* (1951) 259 Wisc. 379, 48 N. W. 2d 460); and *Wyoming* (*State* v. *Langley* (1938) 53 Wyo. 332, 84 P. 2d 767).

U. S. 236 at 245. It should also be noted that, on constitutional questions, the State of Georgia follows the dissent of Mr. Justice Sutherland in the *Nebbia* case rather than what has been the normative interpretation of the police power of the state for the past quarter century. (*See* in this regard, *Harris* v. *Duncan* (1951) 208 Ga. 561, 67 S. E. 2d 692).

Apart from this one aberration, there is no record of judicial denunciation of the principles behind this form of economic legislation. Even those cases which have found particular state's statutes in some measure defective, there has been a merited recognition of the power of the state to enact sales below cost legislation.

Thus the Supreme Court of Ohio in invalidating the unfair cigarette sales law of that state took issue solely with the fact that cash and carry wholesalers suffer discrimination under its terms as opposed to full line wholesalers. Nevertheless, while invalidating the law of that State in *Serrer* v. *Cigarette Service Co.* (1947), 76 N. E. 2d 91, the court stated "In this day and age it can hardly be urged that legislative bodies in the exercise of police power may not, in the public interst and in the promotion of economic stability, prohibit sales below cost * * *."

Similarly, in *Lane* v. *Tilton* (*supra*, footnote 3), the Supreme Court of New Jersey, although invalidating that state's law for failure to treat all who sell at wholesale on equal terms, nevertheless said "Thirty-one states have enacted legislation prohibiting sales of commodities below cost. Whenever the acts have been questioned the courts uniformly have agreed that the Legislature had the constitutional right to accomplish the result intended. In instances certain provisions of the acts have been held to be invalid, but where this has occurred it was not a question of the right of the Legislature to act but a question of the reasonableness of the method employed or the definite-

ness thereof. No state has declared that the exercise of the police power in forbidding loss leader selling is unconstitutional *per se*. *See Wholesale Tobacco Bureau of Southern California, Inc.* v. *National Candy & Tobacco Co.*, 82 P. 2nd 3 (Sup. Ct. of Cal., 1938); *Associated Merchants of Montana* v. *Ormesher*, 86 P. 2nd 1031, 107 Mont. 530 (1939)."

And in *San Antonio Retail Grocers* v. *Lafferty* (1957), 297 S. W. 2d 813, although the Supreme Court of Texas held that state's grocery store unfair sales act unconstitutional, it did so for the reason that the law was applicable only to grocery stores and not to other stores selling similar merchandise which were or might be in competition with grocery stores. The court carefully distinguished unfair sales laws of general application which had been held good in almost all jurisdictions as well as unfair cigarette sales acts which cover all who deal in a particular commodity, citing the *May's Drug Store* case (*supra*, footnote 3), and was at great pains to point out that its decision did not imply a repudiation of the principles established by the Iowa Supreme Court as well as the highest courts of almost every jurisdiction called on to decide this question.

In upholding the unfair sales law of the State of Nebraska, the Supreme Court of that state declared in *Hill* v. *Kusy* (1949), 150 Neb. 653, 35 N. W. 2d 594 "In the exercise of and within the limits of its police power the legislature may forbid that which it deems to be an existing evil and it may limit its prohibition to the matters which in its judgment menace the public welfare." This opinion comports well with the economic latitude which this court is wont to grant state legislation regulating commercial activities.

Thus in *Old Dearborn Distilling Co.* v. *Seagram Distilling Corp.* (1936), 299 U. S. 183, 196, this court stated that "* * * where the question of what the facts establish

is a fairly debatable one, we accept and carry into effect the opinion of the legislature". And in *Lincoln Federal Labor Union* v. *Northwestern Iron & Metal Co.* (1949), 335 U. S. 525, 536 it was said that "* * * states have power to legislate against what are found to be injurious practices in their internal and commercial business affairs so long as their laws do not run afoul of some specific federal constitutional prohibition or of some valid federal law."

In a now famous and much quoted dissent apropos the problem of loss leader selling, Mr. Justice Holmes stated, "I cannot believe that, in the long run, the public will profit by this court permitting knaves to cut reasonable prices for mere ulterior purposes of their own and thus impair, if not destroy, the production and sale of articles which, it is assumed to be desirable the public should be able to get." (*Dr. Miles Medical Co.* v. *Park & Sons* (1911), 220 U. S. 373, dissenting opinion at p. 412). It is this philosophy that lies at the heart of state unfair sales laws and as was pointed out by the Supreme Court of Iowa in the case of *May's Drug Stores, Inc.* v. *State Tax Commission* (1951), 242 Iowa 319, 45 N. W. 2d 245:

> "The question of whether due process is satisfied in this police power measure is whether the means adopted—prohibition of all below cost sales—is reasonable. As previously stated, it is not rendered unreasonable because failing to limit the prohibition to below cost sales intended to injure. And we feel it is not rendered unreasonable by failing to limit the prohibition to sales that can be shown to have the effect or result of injuring free competition. The legislative findings of the evils attributable to below cost selling, the frequent connection between sales below cost and injuries to competitors in free competition, and the difficulty in proving that connection in each case, justifies the flat prohibitition without requiring a judicial finding that each particular below cost sale has the effect or result of injuring a competitor or destroying competition * * *.

"The fundamental policy of the legislation is that freedom of competition is desirable and whatever substantially lessens it or tends to create a monopoly is an evil. The legislature finds that, ordinarily, sales below cost injure competitors and destroy competition. That is sufficient justification for the prohibition of all such sales—at least in the absence of some showing that a substantial volume of sales below cost by dealers would not have such a result. *Booth* v. *Illinois* 184 U. S. 424. * * * If the ordinary and natural result of sales below cost is destructive of competition, then a regulation banning sales below cost is a reasonable regulation * * *"

The Supreme Court of the State of California in construing its unfair sales law as long ago as 1938, pointed out in the case of *Wholesale Tobacco Dealers Bureau* v. *National Candy & Tobacco Co.* (11 Cal. 2d 634, 82 P. 2d 3):

"It has now become firmly established that the police power of the state extends not only to the preservation of the public health, safety and morals, but also extends to the preservation and promotion of the public welfare. In recent years the state, in promoting and advancing the general welfare of its citizens, has frequently and properly used this power to promote the general prosperity of the state by the regulation of economic conditions. This apparent extension of the police power is in fact no extension at all. The police power has not expanded. Its proper exercise has always been and still is confined to regulation in the public welfare, and has always been and still is subject to the standard of reasonableness in its relation to that interest. However, changed social, political and economic conditions have enlarged the field of conduct in order that the general welfare may be adequately protected. The proper application of the power cannot be measured by past precedents—the test is, of course, present day conditions. These principles have frequently been enunciated by this court and by the Supreme Court of the United States * * *"

The unfair sales law of Oklahoma is reasonably related to the ends to be achieved in the elimination of cutthroat competition and the mitigation of disastrous price wars. It imposes no arbitrary deprivation of property nor does it unfairly discriminate against classes and categories. It merely requires a merchant who proposes to sell products to sell his merchandise at a price in excess of the cost of such commodities to him. A statutory presumption is created that a retail merchant's cost of doing business is 6% of the invoice or replacement cost of his merchandise. (*Oklahoma Unfair Sales Law, supra,* Sec. 598.2(a)). This presumption is rebuttable by proof of a lower cost of doing business. In the absence of such proof the presumption may validly stand as a most reasonable conjecture of the minimal figure for such costs.

The latest economic evidence indicates that the true costs of doing business by a retailer are grossly in excess of the modest figure established by the Oklahoma statute. A survey of operating expenses for twenty-two lines of retail trade shows that such operating expenses range from a minimum of 15.9% to a maximum of 50% of net sales in the respective industries (Brown & Davidson, *Retailing Principles and Practices* (Ronald Press, 1953), pages 644-645, table 27 "*Gross Margin, Operating Expense and Net Profit Ratio For Twenty-two Lines of Retail Trade*" citing Dunn & Bradstreet, Inc., "*Operating Ratios For Twenty-five Lines of Retail Trade*"). In appellant's own industry it is reliably stated that net expenses of doing business by a grocery chain constitute 17.6% of total sales (Englund, *Operating Results of Food Chains in 1957* (Harvard University, Graduate School of Business Administration, 1958) table 2 at p. 4, see also *id* at 3).

Given the problem to be remedied, the solution proposed by the State of Oklahoma in the form of an unfair sales

act is disclosed to be mild and uniform in its application. It strikes at only the most blatant and oppressive of fraudulent commercial conduct in the form of loss leader selling and permits substantial leeway for all proper forms of competitive conduct. Not only has the appellant failed to show that it has been injured by the operation of the law, it has failed to demonstrate any conceivable circumstances in which a merchant who does not sell below cost with the intent to injure competition would be adversely affected by that state's unfair sales act.

It is accordingly respectfully submitted that the Oklahoma Unfair Sales Law is a proper exercise of the police power of the state for the purposes of protecting the public welfare and does not constitute a deprivation of due process of law or a denial of its equal protections under the Fourteenth Amendment of the Constitution of the United States.

POINT II

The Oklahoma Unfair Sales Act is consistent with Federal trade regulatory legislation and does not conflict with the Federal supremacy clause in Article VI, Clause 2 of the Constitution of the United States.

Appellant's brief cites but one case where state regulation of commercial conduct was held to be in conflict with the provisions of the Federal Antitrust Law. That case (*Schwegmann Brothers* v. *Calvert Distillers Corp.* (1951), 341 U. S. 384) invalidated the operation of the "nonsigner" clause of a state fair trade law in interstate commerce as violative of the *per se* illegality of price fixing doctrine under the Sherman Antitrust Act (but *cf. Old*

Dearborn Distilling Co. v. *Seagram Distilling Corp.* (1936), 299 U. S. 183). What this Court found objectionable in the *Schwegmann* case was the fixing of uniform prices by private agreement binding upon all who dealt in the product. Unfair sales laws do not involve private agreements for uniform prices. They are the actions of a state designed to permit wide variation in price so long as the price is not set below the individual seller's cost in an attempt to deceive the public and injure competition.

Loss leader statutes are so radically different in philosophy from fair trade laws as to make widely inapposite any analogies drawn from the field of the latter to that of the former.

Unfair sales laws are intended to define a competitive tort—the pricing of merchandise below cost for the purpose of deceiving the consuming public. Fair trade laws are intended to protect the brand name and good will of a merchant's product. Unfair sales laws, unlike fair trade laws, do not permit a manufacturer of his own volition to create, by contract with wholesalers and retailers, rigid minimum resale prices for trade-marked products. They merely require an application of the old tort principle of *sic utere tuo ut alienum non laedas* to the field of buying and selling. Here there is no attempt to fix prices but merely an attempt to require that a merchant who sells a product below the total costs of his acquisition of such product justify such sale as having been made without malevolent intent.[4]

It cannot be too strongly emphasized that unfair sales laws do not attempt and are not intended to set or fix uniform prices. They do not guarantee any merchant a profit on his sales. The minimum statutory markup over

[4] For a more detailed analysis of the difference between fair trade laws and unfair sales acts, see *Zorn & Feldman op. cit.* at pages 317 to 326, inclusive.

the acquisition cost of the commodity has been demonstrated (page 25, *supra*) to be less than half of the minimum operating expense in any line of trade. Even so, a putative violator is permitted to show that his costs of doing business are less. *Commissioner* v. *Ryan* (Mass. Sup. J. Ct., 1948) 80 N. E. 2d 471. The law merely forbids him to sell at less than his cost since such practice has been found to be generally injurious to the economic welfare. As was stated by the Supreme Court of Louisiana in *Louisiana Wholesale Distributors Association* v. *Rosenzweig* (1948), 214 La. 1, 36 So. 2d 403 at 407 "Such acts have consistently been held not to be price fixing statutes. They merely fix the level below which producers and distributors may not sell without injury to a competitor and, ultimately, to the community. * * *" To the same effect see *Wholesale Tobacco Dealers Bureau* v. *National Candy & Tobacco Co.* (1938), 11 Cal. 2d 634, 82 P. 2d 3, 17; *Rust* v. *Griggs* (1938), 172 Tenn. 565, 113 S. W. 2d 733, 735; *Associated Merchants* v. *Ormesher* (1939), 107 Mont. 530, 86 P. 2d 1031, 1033 and *State* v. *Sears* (1940), 4 Wash. 2d 200, 103 P. 2d 337, 346. A comment in the University of Pennsylvania Law Review states: "* * * These statutes do not undertake to *fix* prices at what the legislature considers a desirable level. While all industries are subject to the statutory provisions, only those businesses will be affected which are engaged in uneconomic practices, i.e. those selling goods below cost * * *. There would seem to be little reason to conclude there is a vested right to engage in such socially destructive practices, * * *." (86 U. P. L. R. 780, 781)

But for the *Schwegmann* case, here demonstrated to be inapplicable,[5] the appellant cites no authority for the general proposition that state regulation of internal commercial conduct can conflict with federal antitrust laws. On

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[5] *See also Opinion Atty. Gen. Minn.* 5/25/51 quoted at 1951 CCH Trade Cases par. 62, 833.

the other hand, the appellee's brief at pages 39 and 40 clearly establishes the state's right to act in such circumstances.

Nor does the appellant cite authority for the specific proposition that sales below cost laws are in conflict with the federal antitrust laws. To the contrary, its argument is that because sales below cost have been condemned by both Congress (appellant's brief, p. 57) and the grocery industry (appellant's brief, p. 59), the several states may not take action to inhibit locally conduct which the federal government proscribes nationally. This curious contention, if upheld, would mean that any federal enactment in a field of concurrent jurisdiction would automatically invalidate all state legislation in that field.

The appellant is, however, quite correct in noting that the federal government has, during the past half century, become increasingly aware of the pernicious effect of sales below cost. As long ago as 1916 Congress prohibited sales below cost in foreign commerce (*Laws* of 1916, Chap. 463, Sec. 801, 39 *Stat.* 798, 15 U. S. C. Sec. 72). This law authorizes treble damage suits by parties injured by its violation and expressly reserves the state courts' jurisdiction where such conduct constitutes a violation of state law as well.

Section 3 of the Robinson-Patman Act (15 U. S. C. 13a) makes it unlawful for any person in the course of interstate commerce to sell goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor. It is by now well established that the phrase "unreasonably low prices" means a sale below cost (*Louisiana Farmers Protective Union* v. *Great Atlantic and Pacific Tea Co.* (CCA 8, 1942) 131 F. 2d 419; *Gordon, Wolff, Cowan Co. Inc.* v. *Independent Halvah & Candies, Inc.* (S. D. N. Y., 1949) 9 F. R. D. 700; *F & A Icecream* v. *Arden Farms* (S. D. Cal, 1951) 98 Fed. Supp. 180 at 189; *Moore* v. *Mead's Fine Bread Co.* (1954), 348 U. S. 115.

In addition to the grocery industry conference rules cited by the appellant at page 59 of its brief, trade practice conference rules promulgated by more than sixty industries have declared sales below cost to be an unfair method of competition.[6] These trade practice conference rules are promulgated by the Federal Trade Commission pursuant to authority granted by the Federal Trade Commission Act and are in the nature of advisory opinions for the guidance of businessmen (16 C. F. R. Ch. 1, Subch. A, Part 2, Subpart C, section 2.21). The rules are issued either as Group I or Group II rules. Group I rules are those which define practices considered by the Commission to be violative of laws administered by it (*id.* section 2.22). Invariably rules proscribing sales below cost fall into the Group I category.

This consistent federal policy against predatory pricing is interpreted by the appellant as a bar to supplementary state legislation not inconsistent with such federal policy.

Although the appellant insists that the Oklahoma statute is "in irreconcilable conflict" with federal regulation of sales below cost (appellant's brief, p. 58) this contention is supported by nothing more than the claims (1) that the Oklahoma definition of a sale below cost imposes stricter standards than those imposed by Section 3 of the Robinson-Patman Act and (2) the trade practice conference rules for the grocery industry already regulate sales below cost for this appellant.

In answer to the first branch of this argument, it has already been shown that the judicial construction of the Robinson-Patman Act phrase "unreasonably low prices" has defined it as synonymous with sale below cost (see

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[6] *See e.g.*, Rule 7 of the *Paper Bag Industry*, 16 C. F. R. 24, effective July 17, 1931 and Rule 3 of the *Gummed Paper & Sealing Tape Industry*, 16 C. F. R. 19, promulgated June 24, 1955, as representative of such rules.

cases cited *supra* at p. 29). It is quite obvious that compliance with the state standard would be acquiescence to not defiance of the federal standard. The federal law, having been drawn in broad general terms, obviously looks to the state for supplementation, especially in the field of private enforcement (*Nashville Milk Co.* v. *Carnation Co.* (1958) 355 N. S. 373).

In answer to the second branch of this argument it is only necessary to note that Rule 6 of the grocery industry trade practice rules, to which appellant professes to subscribe, follows the same statutory scheme as that found in the Oklahoma Act. It must also be noted that, as previously mentioned, these rules are advisory only and are enforceable by no sanctions. For that very reason it was necessary for the several states to enact legislation lending effective enforcement power to avowed federal policy.

Thus it is conclusively shown that for the last forty odd years the federal government has outlined a policy of distaste for sales below cost, leaving to the states the programatic implementation of such measures by local laws designed to fit most closely the immediate needs of its inhabitants. The federal government has created, in the field of loss leader sales, a lowest common denominator of business conduct, applicable everywhere, leaving to the judgment of the individual state jurisdictions what further measres should be taken in the interests of its citizens to implement and make meaningful the guidelines indicated by the expressed federal policy.

From the foregoing it must be concluded that the Oklahoma Unfair Sales Law is supplementary to and not in conflict with federal policy on the subject of loss leader legislation, applying that policy in areas beyond the reach of federal law. As such it does not interfere with the operation of federal antitrust law and does not violate the preemption sections of Article VI of the Constitution of the United States.

CONCLUSION

It is respectfully submitted that this Court should dismiss the appeal and affirm the judgment of the court below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, CHESTER INWALD, attorney for The National Association of Tobacco Distributors, Inc., *amicus curiae* herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 6th day of May, 1959, I served copies of the foregoing motion for leave to file a brief as *amicus curiae* and brief of *amicus curiae* on the merits on the several parties to the within appeal as follows:

On Oklahoma Retail Grocers Association, Inc., a corporation, and Louie J. Speed, Inc., a corporation, by mailing copies in duly addressed envelopes with air-mail postage prepaid to their respective attorneys of record as follows:

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Oklahoma City, Oklahoma

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On Safeway Stores, Inc., a corporation, by mailing copies in duly addressed envelopes with air-mail postage prepaid to its attorneys of record as follows:

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No. 252

In the

Supreme Court of the United States

OCTOBER TERM, 1958

SAFEWAY STORES, INCORPORATED,

Appellant,

v.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., and LOUIE J. SPEED, INC.,

Appellees.

On Appeal from the Supreme Court of the State of Oklahoma

APPELLANT'S REPLY BRIEF

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OCTOBER TERM, 1958

SAFEWAY STORES, INCORPORATED,

Appellant,

v.

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., and LOUIE J. SPEED, INC.,

Appellees.

On Appeal from the Supreme Court of the State of Oklahoma

APPELLANT'S REPLY BRIEF

Appellant is constrained to make this reply to Appellee's brief on the merits and the brief *amicus curiae* of the National Association of Tobacco Distributors, Inc.

At the outset the facts of this case must be resolved. There appears to be greater difference of opinion as to the facts now than existed at the trial level. Appellees in their brief, augmented by the brief *amicus curiae*, have produced a scenario reminiscent of the typical TV west-

ern. There are the "good guys and the bad guys." Appellant is chagrined because it is cast in the latter role.

Appellees' opening sentence claims:

> "Safeway's original object was to capture a larger share of the Oklahoma market by cutting prices below cost on certain traffic items."

This is absolutely without basis, in fact or in the record. Statements in both briefs color the facts so as to put Appellant in the position of taking "* * * advantage of every violation (by competition), real or fancied, to grab for itself a greater share of the market at the expense of every independent grocer * * *." Appellees' brief, p. 9 (parenthetical matter added). For example, by casual footnote, Appellee says:

> "If a mama and poppa store sold chicken below cost, Safeway wanted to 'meet' that competition in all 16 of its supermarkets in Oklahoma City." Appellees' brief, p. 9.

The statement is without basis, in fact or in the record. Inflammatory and prejudicial, these charges are intended to obfuscate the issues of the case.

There was no evidence, or inference at the trial level, that Safeway was using competitors' prices as an excuse to lower its own. It was clearly agreed in the trial court and stipulated that Appellant was meeting prices; only this and nothing more. The Supreme Court of Oklahoma said Appellant "* * * set illegal prices for the *sole purpose of meeting prices of its competitors* * * *." (R. 636.) The

question was and is, whether Appellant had the right to meet a legal price below cost or to reduce its price below cost to offset the value of trading stamps given by a competitor in connection with sales made at cost.

This is not the only type of liberty taken with the record and with fact. For instance, it is stated that trading stamps have never triggered a price war. Everyone who has participated in the grocery industry since 1952 knows that trading stamps have triggered not only price wars but trading stamp wars in virtually every part of the country. See Appendix A to this Reply.

No one is more familiar with this fact than the attorneys for The Sperry and Hutchinson Company, the largest trading stamp company in the world, who are the authors of Appellees' brief. It is somewhat inconsistent to say that stamps have never triggered a price war and advertise in national magazines as Sperry and Hutchinson has done, that

> "OVER HALF OF THE NON-STAMP SUPERMARKETS HAVE LOWERED FOOD PRICES BECAUSE OF THE TRADING STAMP'S COMPETITIVE PRESSURE" Time Magazine, March 24, 1958, page 43.

The most serious retail grocery price war in the nation since World War II, the Denver, Colorado, price war of 1953, was the direct result of trading stamp competition. Stamp wars have taken place in every section of the country. See Appendix A to this Reply.

REPLY TO APPELLEES' POINT II

It is charged that Appellant's case is based upon hypothetical cases never presented to the courts below. This claim was not made in Appellees' Motion to Dismiss. Instead, the case was argued at that level on the basis of the facts presented in Appellant's Jurisdictional Statement. In the Supreme Court of Oklahoma Appellees specifically maintained that the injunction entered against Appellant prohibited it from meeting all prices of competitors below the statutory cost to such competitors and that the meeting competition defense of the statute, Article 598.7, was exclusive. Appellees' brief in the Supreme Court of Oklahoma, pp. 15-19. Below, Appellant unsuccessfully contended that a competitor's price could be met, even if below cost, at least where the price met was lawful. This argument has been foreclosed by the Supreme Court of Oklahoma, the Court of final authority in interpreting a statute of that State. Now merchants in Oklahoma cannot meet prices of their competitors set below the statutory cost of those competitors, whether legal or illegal. The question is, therefore, exactly as it has been posed by Appellant. Does this interpretation violate the Fourteenth Amendment to the U. S. Constitution?

Appellees complain because the Supreme Court of Oklahoma did not specifically say that no price set by competitors below their cost can be met. While the opinion of the Supreme Court of Oklahoma is not a model of clarity, its holding is clear in this respect. It affirms an injunction which states that Appellant may "* * * meet in good faith

the prices of competitors who are selling the same articles or products of comparable quality *at cost to them as retailers* * * *." (R. 452.) (Emphasis added.) This Court cannot assume that this language means other than what it says, or that it does not enjoin Appellant from the precise conduct described.

If Appellee's contention that the case presented is hypothetical proves true, then in effect no appeal from an injunction will ever lie and the only way to test an injunction is by conduct violative of its terms. Appellees find themselves in the anomalous position of claiming, time and again, that Appellant's remedy initially was by way of injunction rather than price-meeting (ignoring the fact that the Attorney General had ruled and the Supreme Court of Oklahoma has now affirmed that no injunction lies), while now maintaining vigorously that the injunction may not be tested on appeal because one cannot assume that it means what it says and proscribes the conduct described.

REPLY TO APPELLEES' POINT III

Appellees contend in Point III that selling selected traffic items at reduced prices, set to meet trading stamps, is not the same as giving trading stamps across the board, and further, that there are factual differences justifying the unique classification of trading stamps and the prohibition of price reductions. This argument places Appellees in the untenable position of saying that to meet any price of a competitor in the retail grocery industry, where individual stores sell as many as 7500 distinct items, every

price set by a competitor must be matched, otherwise the prices selected to be met will constitute loss-leaders. Such an incredible interpretation hardly comports with their statement that the statute is designed to protect the small independent from the giant chains. It is, moreover, a practical impossibility. Appellees' argument places in footnote focus the essence of Appellant's argument. The justification for Appellant's prices was the prices of competition. Can a State prohibit price competition at its only effective level?

If one grocer is selling certain items at cost and giving trading stamps with all items sold, and is on a strictly cash basis, making no sales for credit, then certainly a competing cash and carry grocer can select food items, the items with which the customers are most familiar, on which to meet prices. If it selected any other items, its effort to meet competition would have no practical significance, since the purpose of meeting competition is to convey to the customer the fact that prices are at a competitive level. To try to meet every price of a competitor would not only be illegal price following under the Federal Antitrust laws, and a wholly ineffective method of being competitive, but it would also require more price checkers in the competitor's store determining prices at which thousands of items were sold than it would checkstand operators checking out customers on its own premises.

If Appellees are right in their Point III, that the reduction must be met across the board, there would be the

further effect of reducing prices on certain items below the prices of competition since among the thousands of items on the shelves of a grocer, there is always a substantial number sold at prices lower than those of competition.

Of course, the proposition stated by Appellees works most favorably for the trading stamp companies, since the only practical way in which to meet trading stamps across the board is by giving trading stamps. This is exactly what the trading stamp companies want and is the only solution they have urged to Appellant's dilemma. Indeed, it is the solution that has been necessary for Appellant to adopt as a temporary expedient pending the determination of this case.

As its second part of Point III, Appellees contend that trading stamps afford the factual basis for a separate classification on which a state legislature can base distinctive treatment. The legislature of Oklahoma, obviously and admittedly, never in anywise considered trading stamps in passing its Unfair Sales Act. Indeed, it did not consider the discount for cash payment at retail since no such practice exists. This indiscriminate imposition of inequality without any consideration whatsoever is the ultimate exercise of arbitrary power. It is not misreasoned, it is wholly unreasoned. Its operation is pure caprice.

REPLY TO APPELLEES' POINT V

Appellees' Point V is identical procedurally with its argument in its other points. First it says the question is not before the Court. Second, even if it were, it has no merit. This is the preemption question. Overlooked is the fact that the question involves jurisdiction of the subject matter. Jurisdiction of the subject matter cannot be waived. It is the first question passed upon by every court and dispositive of a case whenever raised. Thus must the courts enforce jurisdiction. See *Seaboard Airline R. Co. v. Daniel, 333 U. S. 122*, where Mr. Justice Black, speaking for a unanimous Court, said:

> "The complaint largely relied on an order of the Interstate Commerce Commission as a basis for the relief sought. The answer questioned the validity and scope of that order but did not seek a decree to set it aside or suspend it. Federal district courts have exclusive jurisdiction of suits to enjoin, set aside, annul or suspend an order of the Commission. In such suits the United States is an indispensable party. 28 USCA § 46, 7 FCA title 28; § 46. Although the jurisdiction of the South Carolina Supreme Court was there conceded, and is not here challenged, we think it appropriate to pass upon it."

Moreover, the continuing jurisdiction of the Court by virtue of the injunction below and the necessity for a final determination of this question makes the only reasonable judicial administration to be determination of this question at this time by this court. The question is federal and this Court is the final authority.

In addition, since this case was docketed, there has been an amendment to a federal statute which preempts the

field; the amendment to the Packers and Stockyards Act, September 2, 1958, *7 U. S. Code 227*. Because of powers delegated to the Secretary of Agriculture under the Packers and Stockyards Act *(7 U. S. Code 181, et seq.)*, jurisdiction of the Federal Trade Commission over retail sales by grocers packing, processing and handling substantial quantities of meat was limited. See, *15 U. S. Code, 45 (a) (6)*. The limitation was removed and clear Congressional intent to cover retail sales of grocery chains was shown by the amendment to the Packers and Stockyards Act of September 2, 1958:

> "(a) The Federal Trade Commission shall have power and jurisdiction over any matter involving meat, meat food products, livestock products in unmanufactured form, or poultry products, which by this chapter is made subject to the power or jurisdiction of the Secretary, as follows:
>
> "(2) In an investigation of, or proceeding for the prevention of, an alleged violation of any Act administered by the Commission, arising out of acts or transactions involving meat, meat food products, livestock products in unmanufactured form, or poultry products, if the Commission determines that effective exercise of its power or jurisdiction with respect to retail sales of any such commodities is or will be impaired by the absence of power or jurisdiction over all acts or transactions involving such commodities in such investigation or proceeding." 7 U. S. Code 227.

If the field in which this injunction operates is in effect now preempted by that statute, or indeed by any other federal statute, the injunction cannot stand. *State Farm Mutual Auto Ins. Co. v. Duel, 324 U. S. 154:*

> "We have frequently held that in the exercise of our appellate jurisdiction we have power not only to cor-

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rect error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered." *Patterson v. Alabama*, 294 U. S. 600, 607.

"* * * if, subsequent to the judgment, and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied. * * * In such a case the court must decide according to existing laws; and if it be necessary to set aside a judgment, rightful when rendered, but which cannot be affirmed but in violation of law, the judgment must be set aside." *U. S. v. Schooner Peggy*, 1 Cranch 103, 110. See *Gulf, Colorado and Santa Fe Ry. Co. v. Dennis, 224 U. S. 503.*

On the merits Appellees and their *amicus* diverge on the preemption question. Appellees contend that the Federal Government has not preempted the field and that the states are free to act as they see fit to prevent unlawful combinations, restraint of trade and monopolies. Appellees rely on two cases in support of this position. The first case is *Waters-Pierce Oil Company v. Texas, 212 U. S. 86.* Ignored is the fact that the *Waters-Pierce* case was submitted to the jury specifically to exclude restraints in interstate commerce. The charge read, in part:

"* * * The anti-trust laws of Texas have no reference to agreements or pools or arrangements of any character concerning subjects of interstate commerce, and no agreement, pool, or other arrangement, if any, which the defendant may have entered into with reference to the sale of any subject of interstate commerce can be considered by you as violating any anti-trust law of Texas." *Waters-Pierce, op. cit., 99 through 100.*

Further, the Supreme Court said in its opinion:

> "* * * These findings of facts are conclusive upon us, and show that the conviction was had for acts and transactions committed and carried out within the State of Texas." *Waters-Pierce, op cit., 105.*

In short, the opinion was limited explicitly to intrastate conduct.

The other case relied upon is equally inapposite. *Parker v. Brown, 317 U. S. 341,* did not involve a state statute seeking to regulate competition and monopoly. It was a conservation statute designed to prevent economic waste in the marketing of agricultural products. The California Act did not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in passing the Federal antitrust laws. Both the California Act and the Federal acts could move freely within the orbit of their respective purposes without infringing one upon the other. The case is cited by Appellees for the proposition that the Sherman Act cannot "restrain a state or its officers or agent from activities directed by its legislature." Of course preemption cases arise only where a state attempts to regulate conduct in a field occupied by Federal laws. Thus every preemption case involves the attempts of the state to regulate conduct which it is contended is within the exclusive jurisdiction of the Federal Government.

Appellees' *amicus* takes the position that the Oklahoma Unfair Sales Act is constitutional, because it is supplementary to and not in conflict with the Federal policy as expressed in the antitrust laws. In this respect it states

that the Unfair Sales Acts do not attempt and are not intended to set or fix uniform prices. The record below shows that this was precisely their effect in the State of Oklahoma (R. 117, 357).

In *United States v. Socony-Vacuum Oil Company, 310 U. S. 150, 222*, Mr. Justice Douglas, speaking for the Court, said:

> "Nor is it important that the prices paid by the combination were not fixed in the sense that they were uniform and inflexible. Price-fixing as used in the Trenton Potteries Co. Case has no such limited meaning. An agreement to pay or charge rigid, uniform prices would be an illegal agreement under the Sherman Act. But so would agreements to raise or lower prices whatever machinery for price-fixing was used."

The *amicus* brief goes on to claim that "unreasonably low prices" as used in the Robinson-Patman Act means "a sale below cost." Brief, p. 29. This is not so. Unreasonably low prices may be above or below cost, but even if the Robinson-Patman Act prohibited, or was interpreted as prohibiting sales below cost, how can it possibly have intended the statutory costs enacted by the State of Oklahoma in 1949? The intricate formula for arriving at cost under this statute, which includes among other things, a 6% mark up over invoice and other costs, is far from cost in the ordinary connotation. It is a special statutory creature, wholly different from anything found in the Federal antitrust laws.

Nor is the brief of *amicus curiae* accurate when it says that the grocery industry trade practice rules promulgated by the Federal Trade Commission are advisory and without sanction. The Federal Trade Commission has acted

in a number of cases to prohibit selling below cost. See, Commission Rulings involving sales below cost listed in CCH Trade Regulation Reports at ¶5125.11, which include aluminum, brick and building tile, drugs, tobacco products and notions, ice cream, snap fasteners and yeast.

Rather than belabor this point we would quote M. A. Adelman, who has said:

> "There is no need even to discuss the resale price maintenance legitimized by the Miller-Tydings Act, nor the collusive price fixing permitted and encouraged in thirty-one states by laws against 'selling below cost.' The latter, it has been suggested, ought to be challenged in the federal courts as being in conflict with the antitrust laws of the United States. Certainly the divergence in economic policy could not be greater." 61 H L R 1289, 1349 (1948).

CONCLUSION

For the reasons stated it is respectfully submitted that the judgments of the courts below should be reversed and the permanent injunction vacated.

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PROOF OF SERVICE

I, Ramsey Clark, one of the attorneys for Safeway Stores, Incorporated, Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 15th day of May, 1959, I served copies of the foregoing Reply Brief on the several parties thereto, as follows:

On Oklahoma Retail Grocers Association, Inc., a corporation, and Louie J. Speed, Inc., a corporation, by mailing copies in duly addressed envelopes, with airmail postage prepaid, to their respective attorneys of record, as follows:

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William J. Holloway, Sr., First National Building, Oklahoma City, Oklahoma;

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.....

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Dallas 2, Texas,
Attorneys for Safeway Stores, Incorporated.

APPENDIX A

Trading stamps involved the retail grocery industry in its greatest competitive struggle in the mid-fifties. The struggle continues today. The retail grocery industry in Oklahoma is at this time virtually saturated with trading stamps. The purpose of this Appendix is to show that trading stamps have involved the industry throughout the nation in innumerable wars involving stamps and prices.

The Legislature of the State of Oklahoma, in reenacting the Unfair Sales Act in 1949, after its invalidation by the Oklahoma Supreme Court, gave absolutely no consideration to the trading stamp problem. Trading stamps were never mentioned. The subsequent interpretation of the statute prohibiting, on the one hand, a merchant from meeting the net price of his competitor giving trading stamps while refusing, on the other, an injunction against the stamp-giving merchant, does not encompass any purpose before the Legislature when the Act was passed. It is in effect a wholly arbitrary imposition, without reason or design. It operates in the area of the most significant competitive struggle of recent years. So capricious a determination cannot stand.

The following materials were taken at random, primarily from retail grocery trade publications. They scarcely touch the vast printed material covering the subject and are included here to illustrate the problems created by trading stamps which any legislative body would have to consider to effectively protect the public.

1. "Stamp War Hits New York as A & P Slashes Prices." (headline.)

"The trading stamp war has finally erupted in New York City * * * The New York explosion occurred last week when the giant Atlantic and Pacific food chain took full page newspaper ads to announce dramatic price cuts. Supermarket News reports that the reductions run 'about 2% on a storewide basis' * * * The battle is raging in nearby Philadelphia, in upstate New York, and across the river in New Jersey." *Business Week* magazine, Febr. 4, 1956, page 93.

2. "Ads, Low Prices, and Promotions—Three Weapons to Fight Stamps." (headline.)

"D'Agostino flatly advises 'Save money, Not stamps' " * * * Low prices, stamp foes assert, is the one merchandising weapon that can always meet the challenge of stamps." *Food Topics*, June 18, 1957, page 27.

3. "Black Gold Stamps Enter Grocery Fray in Houston Market" (headline).

"Latest move in the trading stamp war in the Houston area is the introduction by Morris & Sewall, wholesale distributors, of trading stamps on the labels of its private brand line. The other major regional chain, Weingartens, counters with low prices and related ads." *Advertising Age*, September 3, 1956, page 32.

4. "Minneapolis—A year old trading stamp competition here has been intensified with the start of stamp distribution by National Tea and Big Ten Stores." *Food Topics*, July 5, 1954, page 3.

5. "A & P Starting Discount Plan in Erie, Pennsylvania" (headline).

"Erie, Pennsylvania. Some trade observers here describe the A & P device as retaliation against stamps offered by the four G & H supers and Cooks Super Markets. The chain at the same time pushed such come-ons as reductions, including a bread price cut from two loaves for 29¢ to 5¢ for a loaf." *Food Topics*, May 2, 1955.

6. "Ohio Still in Trade Stamp, Rumor Grip" (headline).

"Dayton, Ohio. Between whispers of new mergers in the making and rumors of stiffer stamp battles ahead, local trade circles are not sure where to look next * * *. And Toledo, which has been in the trade news frequently of late for its highly-charged stamp battles, is at it again * * * Almost every super in Toledo, except A & P and Bellman's, is offering some sort of trading stamp or premium plan." *Food Topics*, October 24, 1955, page 3.

7. "Boston Stamp Battle Continues, Live Elephants Called In" (headline).

"As the battle continues, the chains are taking full-page ads and pointing up the advantages of their particular stamp plan." *Food Topics*, October 24, 1955, page 3.

8. "Trading Stamp War: A National Roundup" (headline).

"*Cincinnati*—Kroger credited 15-20% volume rise to giving stamps. Thriftway of that city cut prices to meet the stamps."

Los Angeles—A grocer comparing trading stamps to low price, hard merchandising gave stamps the advantage saying, "They keep shoppers from running all over town for bargains."

"*Chicago*—While retailers appear overwhelmingly determined to block the entry of stamps locally, justification for their nation-wide mushrooming is offered here * * *."

"'*West Coast*—Littleman chain: 'When we wish to offer extra special customer inducement, we run price specials * * * Stamps mean extra work for our already hard-working clerks. Stamps tie up our line. Stamps mean added bookkeeping. We feel you just don't have to do this sort of thing to sell good merchandise!"

"*Philadelphia*—'Food Fair has found it necessary to meet competitive trading stamp promotions * * *. In the two principal areas in which this has become necessary, we made it clear that while we would not be the first to adopt stamps, we would certainly be a very fast second'." *Food Topics*, June 4, 1956, page 2.

"It's about time some responsible governmental agency turned its attention to this parasite * * *. We believe the entire food industry * * * would welcome a law which would finally and for all time eliminate this evil. *Pennsylvania Grocer*." *Food Topics*, June 4, 1956, page 2.

9. "Halt Stamp War in Denver."

"Stamp company officials stepped in last Monday to bring to a halt Denver's bitter 'Battle of Stamps', one of

the most fantastic battles ever staged by food chains here." *Supermarket News*, October 12, 1953, page 1.

10. Chicago—"Disadvantage of trading stamp plans outweigh their advantages. This was the prevailing view at a panel discussion held by the National Association of Food Chains during its annual meeting here last week * * * no one gains but the stamp operator * * * Disadvantages listed were: High cost of stamps; slowdown of the checkout procedure; difficulty of discontinuing the plan once started; handling, storage and prevention of theft of the stamps * * *. The current situation in Denver was cited, these stamps are being offered on the basis of 'Triple Stamps Three Days a Week'. It was said to be prohibitive in cost and beyond control in Denver where seven different plans are under promotion * * *. Estimates by supermarket operators who tried stamp plans revealed that an increase in business of at least 33 per cent was necessary to make the plan pay." *Supermarket News*, October 5, 1953, page 14.

11. "Quadruple Stamps: Denver Armistice Wishful Thinking." (headline). *Supermarket News*, October 5, 1953, page 1.

12. "Stamp-Givers Add More Promotions" (headline).

New York: "It's recalled here that when stamps first moved in with any force here last spring, A & P embarked on a great price slashing campaign that was eventually to spread to many stamp-saturated areas in its operating areas."

Grand Rapids: "All the leading supermarkets give double stamps on Wednesdays to meet competition."

San Antonio: "All major groups here use them. All observe double stamp Wednesday." *Supermarket News*, December 10, 1956, page 10.

13. "Conference on Stamps at N. Y. State Level Develops Into Battle." (Headline.)

"The Third Street Cash Market had lost 50 per cent of his business to stamp carrying supermarkets." *Supermarket News*, October 8, 1956, page 4.

14. "Kroger Meets Double-Stamp Fire with Fire" (headline). *Supermarket News*, May 7, 1956, page 12.

15. Genetti's four store chain of Hazelton, Pa., ran ad stating, "$103,642.00 in S & H Green Stamps given to Genetti's Customers in 1954." *Supermarket News*, January 17, 1955, page 17.

16. "Fear Statewide War By Oklahoma Stores" (headline).

"Fanned to fever pitch by recent Sunday openings of chains and general tightening of competitive grocery business, the local upswing of trading stamp usage threatens to break into statewide war with the introduction of a measure into the Oklahoma Legislature that seeks to restrict the use of trade stamps and coupons by retailers of the state * * *. The bill introduced by Rep. B. F. Hill, a grocer of Okemah, would impose a tax * * *." *Supermarket News*, April 13, 1953, page 24.

17. Cover picture and article titled "Marketing's Irresistible Temptation: Trading Stamps", *Business Week*, May 17, 1956, pp. 43-60.

18. "Trading Stamps Become a Sticky National Question." *Life*, March 4, 1957, pp. 114-126.

19. "Ottawa Stamp War Seen as RMA Continues Fight." *Premium Practice* magazine, December 1956, page 43.

20. "Reactions are invariably slow in the huge retail food industry, but it is apparent that a wave of retaliation to stamp plans by non-stamp stores is sweeping the country. This retaliation is taking many forms, but most prevalent are the following, according to PROGRESSIVE GROCER'S check of hundreds of leading operators from coast to coast. Dealers report that these are the steps they are taking to maintain and to increase customer traffic and volume:

Newspaper coupons offering substantial price cuts in specified items.

Prominent featuring of straight price specials.

Store drawings for major prizes.

Cash register tape plans (giveaways and self-liquidators).

Cash rebates based on percentage of register slip totals."

Progressive Grocer, September 1956, page 72.

21. "The Battle of Trading Stamps" (headline). *Southern California Grocers*, October 16, 1953, page 4.

22. "New Type of Price War" (headline). "Trading Stamps are an expensive gimmick, creating no product, but making customer think he is getting something for nothing" (sub-headline). By Anthony E. Madler, Managing Director, Wisconsin Food & Tobacco Institute. "In Wisconsin, a new type of food price war has gained momentum in the last two years * * *. Stamps are likely to lead to price wars, resulting in price cuts which the small merchant cannot absorb." *Wisconsin Food Dealer*, February 1956, pp. 3-4.

23. "Stamp 'War' Heats Up North and South Ohio" (headline). *Food Topics*, October 10, 1955, page 1.

24. "Horror Story" (headline). "Denver Trading Stamp War Demoralizes Retailing, increases Costs of Doing Business, and Ends in Stalemate" (sub-headline). *National Association of Retail Grocers U. S. Bulletin*, December 1953, page 32.

25. "Big Chain Stamps Hit Atlanta: Huge Fight Seen." (headline).

"The pressure being created by the stamps brought many food men to comment that 'before it's all over, there will be a stamp war to the finish'." *Food Topics*, November 7, 1955.

26. "Can Trading Stamps Help Business?" (headline).

"Stamp wars have raged in other parts of the country." *Pacific Northwest Grocer and Meat Dealer*, August 1954.

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In The
Supreme Court of the United States

October Term, 1958

No. 252

SAFEWAY STORES, INCORPORATED,
Appellant,

VERSUS

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., and
LOUIE J. SPEED, INC.,
Appellees.

MOTION FOR LEAVE TO SUBMIT A BRIEF *AMICUS CURIAE*

BRIEF OF ATTORNEY GENERAL OF OKLAHOMA AS *AMICUS CURIAE*

MAC Q. WILLIAMSON
Attorney General of Oklahoma
State Capitol Building
Oklahoma City 5, Okla.

MAY, 1959.

KING LAW BRIEF CO., COMMERCE EXCHANGE BLDG., OKLAHOMA CITY—PHONE FO 5-2969

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In The
Supreme Court of the United States

October Term, 1958

No. 252

SAFEWAY STORES, INCORPORATED,

Appellant,

VERSUS

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., and LOUIE J. SPEED, INC.,

Appellees.

MOTION FOR LEAVE TO SUBMIT A BRIEF *AMICUS CURIAE*

The undersigned, as Attorney General of the State of Oklahoma, respectfully moves this Court for leave to file the accompanying brief, as *Amicus Curiae;* and realizing the "eleventh-hour" nature of this filing, would show to the Court as follows:

This case brings in issue the constitutionality of what is deemed to be a most important Oklahoma Statute,

namely "The Oklahoma Unfair Sales Act" (Okla. Statutes 1951, Title 15, Chap. 14, Sec. 598.1-598.11). The opinion below is reported in 322 P. 2d p. 179 (Okl., 1957).

Bearing in mind Paragraph 4 of Rule 42, I desire to state that only quite recently the Oklahoma Retail Grocers Association, Inc., have directed the attention of the Governor of Oklahoma (and the undersigned) to the pendency of this litigation; and further, to note the receipt—by the undersigned—from the Governor of Oklahoma (on May 15, 1959) of the following official communication:

(SEAL)

"STATE OF OKLAHOMA
EXECUTIVE CHAMBERS
OKLAHOMA CITY

J. Howard Edmondson
Governor

May 13, 1959

Honorable Mac Q. Williamson
Attorney General
Building

Re: Safeway Stores, Incorporated
Appellant,
v.
Oklahoma Retail Grocers Association, Inc., and Louie J. Speed, Inc.,
Appellees.

Dear General Williamson:

"This office is informed that the above styled case has been appealed to the Supreme Court of the United States and has been designated as Case No. 252.

"We are further informed that this case is a direct attack upon the constitutionality of the Oklahoma Unfair Sales Act, therefore, raising a question of substantial interest to the State of Oklahoma.

"You are, therefore, requested and directed to make an examination of this case and to file such briefs and enter such appearances as you may deem proper.

Sincerely,

s/ J. HOWARD EDMONDSON
GOVERNOR"

JHE/sps

And for the further information of the Court I may state that a short time prior to the receipt of this letter from the Governor, the Executive Secretary-Manager of the State Retail Grocers Association, together with their chief counsel, discussed the pendency of this litigation with both the Governor's office and with the undersigned.

Before that time (and being concerned and occupied with our duties relative to a current regular session of the State Legislature) neither the Governor's office nor the undersigned had been consulted regarding the filing herein of a brief *Amicus Curiae*.

Acting upon authority hereinabove set forth, and in support of our "Motion" herein, I would state to the Court that under the provisions of the Oklahoma Statute in question, the retail business and industry of this State has enjoyed—because of the terms of this Act—a period of orderly progress in retail merchandising, free from use

of "loss leader" or "cut throat" type of merchandising competition; and that most—if not all—of the thousands of Oklahoma retail grocers—and other retailers—are interested in this litigation.

Wherefore, it is respectfully urged that the accompanying brief—service being had by mail upon all counsel of all parties of record—be permitted filing and consideration, herein.

Dated May 18, 1959

Respectfully submitted,

MAC Q. WILLIAMSON
State of Oklahoma ex rel. Mac Q. Williamson, Attorney General of Oklahoma
State Capitol Building
Oklahoma City 5, Oklahoma.

In The
Supreme Court of the United States

October Term, 1958

No. 252

SAFEWAY STORES, INCORPORATED,
Appellant,

VERSUS

OKLAHOMA RETAIL GROCERS ASSOCIATION, INC., and LOUIE J. SPEED, INC.,
Appellees.

BRIEF OF ATTORNEY GENERAL OF OKLAHOMA AS *AMICUS CURIAE*

STATEMENT OF *AMICUS CURIAE*

The Attorney General of Oklahoma appears as *amicus curiae* in this case (Rule 42 [Subd. 4]) to support the constitutionality of the Oklahoma Unfair Sales Act (Oklahoma Statutes 1951, Title 15, Chapter 14, Sections 598.1-

598.11). The opinion below is reported at 322 P. 2d 179 (Okl., 1957).

STATEMENT OF THE CASE

Safeway was charged with numerous instances of selling "loss leaders"[1] at prices below cost in violation of the Oklahoma Unfair Sales Act in five different cities in Oklahoma[2]. It sought to justify its conduct by claiming:

(1) that in Tulsa, Enid, Shawnee and Norman, its sales were made to meet the equally low prices of its competitors who were also selling below cost; and,

(2) that in Oklahoma City it was "meeting" the prices of its competitors who were selling at the statutory minimum and giving trading stamps as well (R. 51-56).

Safeway paid no heed to whether the prices it claimed to be meeting were legal or illegal.

Q. "All right; now what was your policy,—was it your policy to meet any price of a competitor, regardless of whether it was legal or illegal?

1. "The loss leader system is a business scheme whereby a widely advertised product of standard quality and popular demand is sold at little or no profit as an inducement to the customer to enter the store." Note, 22 Wash. U. L. Q. 549 (1937) For Brandeis the inducement was a *false* inducement, the loss leader a "'mis-leader,' because ordinarily the very purpose of the cut-price is to create a false impression (of general economies) • • •" Brandeis, *Preventing Standardized Prices,* quoted in Weigel, *The Fair Trade Acts,* 82 (1938). Brandeis feared the use of such devices would eliminate the small entrepreneur. Brandeis, *Business—A Profession* (1914). See also Seligman and Love, *Price Cutting and Price Maintenance,* 143-162 (1932), emphasizing the effect of interdependent prices on loss leader selling. Holmes also opposed loss leadering, saying: "I cannot believe that in the long run the public will profit by this Court permitting knaves to cut reasonable prices for some ulterior purpose of their own and thus to impair, if not to destroy, the production and sale of articles which it is assumed to be desirable that the public should be able to get." *Dr. Miles Medical Co.* v. *Park & Sons Co.,* 220 U. S. 373 (1911), dissenting opinion at 412.

2. Oklahoma City, Tulsa, Enid, Shawnee and Norman.

A. It was our policy to meet the price.

Q. Regardless, is that right?

A. Regardless, yes, sir" (R. 239).

This "policy" of indiscriminate retaliation the Oklahoma Supreme Court rejected as procedurally not in keeping with the clear dictates of the Act; saying:

> "We are of the opinion that this injunction granted by the trial court against Safeway was proper, because under our Statute the appropriate remedy was by injunction and not by retaliation or retaliatory action, such as was practiced by Safeway. In this respect the judgment of the trial court is affirmed" (R. 637).

The State court also affirmed the denial of Safeway's cross petition which sought to enjoin the giving of trade stamps on minimum priced goods on the ground that the stamps cut price. Said the court:

> "[W]e conclude that the weight of law, logic and reason clearly and distinctly shows that the practice of giving trading stamps in the usual customary manner does not amount to, nor will it sustain, a charge of price cutting" (R. 645).

SUMMARY OF ARGUMENT

POINT I

The Oklahoma Unfair Sales Act is a proper exercise of the police power. The decision that illegal competition cannot be met by retaliation but only by application for injunctive relief is based on independent and adequate non-Federal grounds. Safeway's imagined dilemma of being unable to meet sales which are both below cost and legal was never presented to nor passed on by the State court.

POINT II

The distinction between trading stamps not in excess of 3% and loss leaders is a practical difference involving no individual discrimination.

I. The Oklahoma Unfair Sales Act Prohibiting Loss Leader Merchandising, Where the Intent Is to Injure Competitors and the Result Is to Divert Trade, Is a Valid Enactment under the Police Power of the State.

The questions presented by Safeway in its attack on the Oklahoma Unfair Sales Act are not novel to State courts. Thirty states have statutes prohibiting sales below cost which are comparable if not equivalent to the instant Act[3]. Their constitutionality has been well tried and sus-

3. Arizona Revised Statutes, 1955, Volume 5, Title 44, Chapter 10, Article 4, Sections 44-1461, 44-1466.

Arkansas Statutes, 1947, Volume 6, Title 70, Chapter 3.

California Laws, 1941, Chapter 526 (California Business and Professions Code, Division 7, Part 2, Chapter 4). Amended California Laws of 1953, Chapters 333-334.

Colorado Revised Statutes, 1953, Volume 3, Chapter 55, Article 2, Sections 55-2-1 to 55-2-17.

Connecticut General Statutes, Revision of 1949, Title 48, Chapter 314, as amended by Public Act No. 544, Acts of 1955.

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Kansas General Statutes, 1949, Annotated, Chapter 50, Article 4.

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Maine Revised Statutes, Ninth Revision, 1954, Chapter 184.

Maryland Code, 1951, Annotated, Article 83, Sections 111-115.

Massachusetts General Laws, 1932, Chapter 92, Sections 14E-14K (inserted by Act of 1938, Chapter 410). Amended by Act 1939, Chapter 189; Act 1941, Chapter 494.

Minnesota Statutes, 1953, Chapter 325, Sections 325.01-325.07, 325.48, 325.49, 325.52. Amended, Laws of 1955, Chapter 339, Laws of 1957, Chapter 822.

Montana Revised Code, 1947, Title 51, Chapter 1. Amended Montana Laws, 1949, Chapter 129.

tained[4]. In the few cases where portions of the statutes

(3 Continued)

Nebraska Revised Statutes, 1943, Chapter 59, Article 12. Amended Laws, 1947, Chapter 203.

New Hampshire Revised Statutes, Annotated, 1955, Chapter 358.

New Jersey Laws, 1938, Chapter 394 (New Jersey Revised Statutes, Title 56, Chapter 4).

North Dakota Revised Code, 1943, Chapter 51 0.

Oregon Revised Statutes, Title 50, Chapter 46, Sections 646.020, 646.100 to 646.180, 646.990.

Pennsylvania Laws, 1941, Act. No. 344.

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South Carolina, South Carolina Code of Laws, 1952, Title 56, Chapter 2, Article 3.

Tennessee Code Annotated, 1955, Title 69, Chapter 3.

Utah Code, 1953, Title 13, Chapter 5, Amended Senate Bill 92, Laws of 1955.

Virginia Code, 1950, Title 59, Chapter 2; Amended, Acts of Assembly, 1950, Chapter 588.

Washington Revised Code, 1951, Title 19, Chapter 19.88, Sections 19.88.040-19.88.170.

West Virginia Acts of 1939, Chapter 151, West Virginia Code, Sections 4678 (8) (a)-(n).

Wisconsin Statutes, 1955, Title XII, Chapter 100, Section 100.30; Amended Chapter 186, Laws of 1957.

Wyoming Compiled Statutes, 1945, Article 4, Sections 39.406-39.416.

4. *People of the State of California* v. *Gordon*, 105 Cal. 2d 711, 234 P. 2d 287 (1951)

Louisiana Wholesale Distributors Association, Inc. v. *Rosenzweig*, 212 La. 1015, 36 S. 2d 403 (1948)

Fournier v. *Troianello*, 636 Mass. 232, 127 N. E. 2d 167 (1955)

Associated Merchants of Montana et al. v. *Harry L. H. Ormesher and Bernard Blodgett*, 107 Mont. 530, 86 P. 2d 1031 (1939)

McIntyre v. *Borofsky*, 95 N. H. 174, 59 A. 2d 471 (1948)

Rust et al. v. *Griggs*, 172 Tenn. 565, 113 S. W. 2d 733 (1938)

State of Washington v. *Sears*, 4 Wash. 2d 200, 103 P. 2d 337 (1940)

State of Wisconsin v. *Twentieth Century Market*, 236 Wis. 215, 294 N. W. 873 (1940)

State of Wisconsin v. *Ross*, Wis. Sup. Ct., 1950-1951—C. C. H. Trade Cases, Par. 62,860 (1951)

State of Wyoming v. *Langley*, 53 Wyo. 332, 84 P. 2d 767 (1938)

Decisions in other states point to the probable constitutionality of the statutes in those states;

Carroll v. *Schwartz*, 127 Conn. 126, 14 A. 2d 754 (1940).

Moore v. *Northern Kentucky Independent Food Dealers Association et al.*, 286 Ky. 24, 149 S. W. 2d 755 (1941).

were struck down[5], they have usually been amended to cure the defect[6], and their constitutionality, if subsequently re-challenged, sustained[7], as in the case of the very Statute here involved[8].

The statutes are directed against loss leader merchandising, a technique that has long been the subject of regulation. As early as 1902 South Carolina prohibited the use of loss leaders[9].

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5. *State of Arizona* v. *A. Meyerson et al.*, Sup. Ct. of Ariz., Pima County, 1940-1941, C. C. H. Trade Cases, para. 56,099 (1941).
State of Arizona v. *Walgreen Drug Co.*, 57 Ariz. 308, 113 P. 650 (1941).
Standard Stores v. *Safeway Stores, Inc. et al.*, Colo. Dist. Ct., 1955, C. C. H. Trade Cases, para. 68,153 (1955)
State of Kansas v. *Consumer's Warehouse Market, Inc.*, Kan. Sup. Ct., 329 P. 2d 638 (1958).
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Isaac Cohen et al. v. *Frey and Sons, Inc. et al.*, 197 Md. 586, 80 A. 2d 267 (1951).
Great Atlantic and Pacific Tea Co. v. *Ervin*, D. C. Minn., 23 F. Supp. 70 (1938).
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Commonwealth of Pennsylvania v. *B. P. Zasloff*, 338 Pa. 457, 13 A. 2d 67 (1940).

6. Minnesota Statutes of 1953, Chapter 325, as amended by Chapter 339, Laws of 1955 by Chapter 822, Laws of 1957.
Nebraska Revised Statutes, 1943, Chapter 59, Article 12, as amended by Laws of 1947, Chapter 203.
Pennsylvania Laws of 1941, Act No. 344.

7. *McElhone* v. *Geror*, 207 Minn. 580, 292 N. W. 414 (1940).
Hill et al. v. *Kusy*, 150 Neb. 653, 35 N. W. 2d 594 (1949).

8. *Englebrecht* v. *Day*, 201 Okl. 585, 208 P. 2d 538 (1949).
Adwon v. *Oklahoma Retail Grocers Association, Inc.* 204 Okl. 199, 228 P. 2d 376 (1951).

9. South Carolina Civil Code of 1912, §2451 (1902, XXIII, 1057) provided: "If any person, persons, company, partnership, association, or corporation engaged in the manufacture or sale of any article of commerce or consumption from the raw material produced or mined in this State, shall, with the intent or purpose of driving out competitors, sell at less than the cost of manufacture, or give away their manufactured products, for the purpose of driving out competitors or financially injuring competitors engaged in the manufacture and refining of raw material in this State, said person, persons, company, partnership, association or corporation

By now there can be no question that there is a sizeable and widely held body of public opinion favoring the prohibition of loss leadering[10]. This opinion found formulation in Oklahoma in the instant Act as it did in the unfair sales acts of numerous other states referred to above and in the Robinson-Patman Act on the Federal level (U. S. C. 13a *et seq.*). While one may disagree with the wisdom of such legislation, or question its place in the scheme of other legislation fostering competition[11], there is no question that the Oklahoma Legislature is entitled to give expression to such views.

> "It is not the function of a court to determine whether the public policy that finds expression in legislation of this order is well or ill conceived [Citing cases]. The judicial function is exhausted with the discovery that the relation between means and end is not wholly vain and fanciful, an illusory pretense. Within the field where men of reason may reasonably differ, the legislature must have its way."
>
> *Williams* v. *Mayor*, 289 U. S. 36, 42 (1933).

(9 Continued)
resorting to this method of securing a monopoly in the manufacture, refining and sale of a finished product produced or mined in this State shall be deemed guilty of a conspiracy to form or secure a trust or monopoly in restraint of trade and on conviction shall be subject to the penalties of this Act."

10. "The Statutes have their origin in recurrent attempts of competitors to prevent 'destructive' price competition. • • • Under this theory every fair-dealing enterprise is entitled, and even obliged to sell its product at a price which adequately covers all its costs; any lower price is branded as an unfair 'chiseling' attack on other sellers or as a vicious attempt to fool the public." Lovel, *Sales Below Cost Prohibitions*, 57 Yale L. J. 391, 392-394 (1948).

11. Cf. *Standard Oil Co.* v. *Trade Commission*, 340 U. S. 231, 249 (1951) and the articles cited in n. 15.

"When the subject lies within the police power of the State, debatable questions as to reasonableness are not for the courts but for the legislature, which is entitled to form its own judgment, and its action within its range of discretion cannot be set aside because compliance is burdensome."

Sproles v. *Binford*, 286 U. S. 374, 388-389 (1932).

Within the boundaries charted in *Nebbia* v. *New York* (291 U. S. 502 [1934]), it seems quite clear that a State may regulate business to the extent of prohibiting certain kinds of trade practices provided only "that the law shall not be unreasonable, arbitrary or capricious and that the means selected shall have a real and substantial relation to the object sought to be attained" (at 525). "Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty" (at 539).

Indeed, one need not go as far as *Nebbia* to sustain the constitutionality of unfair sales acts since what is here involved is the prohibition of destructive trade practices, not price control[12].

12. "It should be noted, however, that these statutes do not undertake to fix prices at what the Legislature considers a desirable level. While all industries are subject to the statutory provisions, only those businesses will be affected which are engaged in uneconomic practices, i. e. those selling goods below cost 'for the purpose of injuring competitors and destroying competition.' There would seem to be little reason to conclude that there is a vested right to engage in such socially destructive practices, and that the prohibition of them would be a deprivation of property without due process of law." Note, 86 U. of Pa. L. Rev., 780, 781 (1938).

To move from general principles to the object of attack, it is to be realized that Safeway no longer argues as it did below that it must have the unfettered right to meet competition regardless of the illegality of that competition. Similarly it entirely ignores the basic holding of the State courts that it was procedurally out of step in refusing application for injunctive relief in favor of retaliatory action in the market place that threatened chaos (R. 442, 637).

Instead it shifts its focus to a new, hypothetical specie of competition—that which is below cost, but legal because made with an innocent intent. No such sales were shown at the trial, so neither the trial court nor the Oklahoma Supreme Court ever construed—or were asked to construe—the Statute with respect to Safeway's right to meet such competition.

> "Of course, the argument to sustain the contention is that, if the Statute embraces cases such as are supposed, it is void as to them, and, if so void, is void *in toto*. But this Court must deal with the case in hand and not with imaginary ones. It suffices, therefore, to hold that, as applied to cases like the present, the Statute is valid. How the State court may apply it to other cases, whether its general words may be treated as more or less restrained, and how far parts of it may be sustained if others fail are matters upon which we need not speculate now."
>
> *Yazoo and Mississippi Valley Railroad* v. *Jackson Vinegar Co.*, 226 U. S. 217, 219-220 (1912).

"Where the highest court of the State has refused to deal with applications of a statute not involved

in the case before it, the Supreme Court seems invariably to have followed the holding of the *Yazoo* case."

Hart & Wechsler, *The Federal Courts and the Federal System*, 178.

See also:

Smiley v. *Kansas*, 196 U. S. 447, 454-455 (1905).

Safeway's claim is that under the Act as construed and applied in the injunction the day may come when one of its competitors will sell below cost with innocent intent and Safeway will be caught in the position of being unable to meet such sales in the market place or to have them enjoined through court action. If true, of course, Safeway would be equally free to do the same thing, but, on this projected dilemma Safeway pitches its due process attack. The fact is, however, that one cannot say that Safeway will be unable to meet such sales either by market action or injunction. Safeway never posed any such hypothetical case to the Oklahoma courts. Let Safeway present that issue to the Oklahoma courts and they will lift Safeway from the horns of its imagined dilemma.

Moreover, there is a non-Federal ground "independent of the Federal ground and adequate to support the judgment." *Fox Films Corp.* v. *Muller*, 296 U. S. 207, 210 (1935). Under established rules of Federal jurisdiction [*New York City* v. *Central Savings Bank*, 306 U. S. 661 (1958); *Honeyman* v. *Hanan*, 300 U. S. 14, 18-19 (1936);

Lynch v. *New York ex rel. Pierson*, 293 U. S. 52, 54-55 (1934)], Safeway is without standing to contest the State court's decision that Safeway was properly enjoined because it chose the wrong remedy, that of retaliation rather than injunctive relief. On the question of what Safeway's proper remedy was in the face of illegal competition, the Oklahoma courts were most explicit in holding that Safeway was remitted to application for injunctive relief. Without enforcing such compliance the whole purpose of the Act would be frustrated and chaos would ensue (R. 442).

> "Here the non-Federal ground upon which the Oklahoma court based its decision * * * [was] that under the Oklahoma statutes the petitioner had a plain, adequate and exclusive remedy at law."
>
> *McCoy* v. *Shaw*, 277 U. S. 302, 303 (1928).

This "plain, adequate and exclusive remedy at law" Safeway chose to ignore claiming it was against company policy to sue a competitor (R. 243). Having deliberately and repeatedly ignored the lawful processes available to it and resorted instead to outlawed retaliation, Safeway can scarcely be heard to complain that it was denied due process of law.

A final answer to Safeway's argument is to question how probable it is in this practical world for one to "innocently" loss leader. As the California Supreme Court said in construing the California Unfair Practices Act:

"[W]hen a person causes injury by his acts he should be deemed to intend such consequences unless he can excuse or explain his conduct by facts showing that he had an innocent intent."

People v. *Pay Less Drug Store*, 25 Cal. 2d 108, 114-115, 153 P. 2d 9, 13 (1944).

Many would doubt that there is such a creature as an innocent loss leader saying that the concept is a contradiction in terms. In any case, the facts which Safeway presented to justify its price cutting did not persuade the court that it was innocently loss leadering or that its competitors were. Indeed on the basis of the cross examination of Safeway's principal administrative officer, MR. CHRISTIENSEN, the trial court held and the Oklahoma Supreme Court affirmed that Safeway

"• • • without legal justification wilfully and intentionally reduced its prices in an effort to increase its volume, to the detriment of other grocers" (R. 447).

II. To Distinguish Between Trading Stamps Not In Excess of 3 Per Cent and Loss Leaders Involves No Invidious Discrimination.

The Oklahoma Unfair Sales Act as construed by the Oklahoma Supreme Court prohibits direct price cuts on selected traffic items but does not prohibit the giving of trading stamps across the board so long as the stamps do not exceed 3 per cent in value. In this distinction Safeway claims a denial of the equal protection of the laws.

But the distinction is not invidious, and, therefore, does not violate the Fourteenth Amendment,

Williamson v. *Lee Optical Co.*, 348 U. S. 483, 489 (1955).

(1) Safeway no less than any other merchant in Oklahoma can give a *bona fide* cash discount in cash across the board provided it is not in excess of 3 per cent.

(2) Safeway no less than any other merchant in Oklahoma can issue trading stamps, cash register receipts or other evidence of credit not in excess of 3 per cent on all purchases for cash.

(3) Safeway no more than any other merchant in Oklahoma is prohibited from selectively cutting prices below the statutory minimum and claiming such loss leaders are netted cash discounts.

The distinction drawn is clear[13] and uniform[14]. The distinction is grounded, not only on a careful review of the numerous decisions of other state courts of last resort, but more importantly on a demonstrated difference in market effect. Trading stamps have been on the scene so long that they have become an accepted part of retail trade.

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13. Safeway finds "customary discount for cash not in excess of 3 per cent" too vague. But surely such an accepted trade practice is no more vague than "shortest practicable route" upheld in *Sproles* v. *Binford, supra*, 286 U. S. 374, 393 (1932) where this Court said: "The requirement of reasonable certainty does not preclude the use of ordinary terms to express ideas which find adequate interpretation in common usage and understanding. (Citing cases) The use of common experience as a glossary is necessary to meet the practical demands of legislation."

14. Safeway also objects to the fact that the court limited to 3 per cent cash discounts only those parties before the court. It does not indicate how the court could have enjoined those not before it. Moreover, one would suppose that *stare decisis* has not departed from Oklahoma, so that this rule coming as it does from the court of last resort in Oklahoma will have general and uniform application.

Neither the merchant nor the consumer looks upon them as a price cut. While they are something extra like many of the services provided to attract trade—free parking, free delivery, extension of credit, etc.,—they are not considered price cuts[15]. Loss leadering involves advertising for 95c what all the others are selling for $1.00. Trading stamps by contrast are given not in relation to any particular item but on total purchases. Emphasis is not on the price of any given item but on an offering of a general service across the board. Whether the distinction is qualitative or quantitative or both it is quite clear it is a practical distinction within the competence of Oklahoma to decide in regulating local economic practices.

> "To make scientific precision a criterion of constitutional power would be to subject the State to an intolerable supervision hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure * * * There is no constitutional requirement that regulation must reach every class to which it might be applied—that the legislature must regulate all or none * * * The question is whether the classification adopted lacks a rational basis."
>
> *Sproles* v. *Binford, supra*, 286 U. S. 374, 388, 396 (1932).

No invidious discrimination was sought and none has resulted.

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15. See Opinion of the Attorney General of Oklahoma May 8, 1950.

CONCLUSION

Wherefore, it is respectfully submitted that the appeal should be dismissed or the judgment affirmed.

s/ MAC Q. WILLIAMSON
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CERTIFICATE OF SERVICE

I, Mac Q. Williamson, Attorney General of Oklahoma, on the relation of the State of Oklahoma, *amicus curiae* herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 21st day of May, 1959, I served copies of the foregoing Motion for Leave to File a Brief as *Amicus Curiae* and Brief of *Amicus Curiae* on the Merits, on the several parties to the within appeal, as follows:

On Oklahoma Retail Grocers Association, Inc., a corporation, and Louie J. Speed, Inc., a corporation, by mailing copies in duly addressed envelopes with proper postage prepaid, to their respective attorneys of record, as follows:

Miskovsky & Miskovsky
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On Safeway Stores, Inc., a corporation, by mailing copies in duly addressed envelopes with air mail postage prepaid, to its attorneys of record as follows:

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MAY, 1959.